

WHITELAND TOWN COUNCIL

ORDINANCE NO. 2023-10

ORDINANCE AUTHORIZING THE ISSUANCE OF THE TOWN OF WHITELAND, INDIANA ECONOMIC DEVELOPMENT REVENUE BONDS, SERIES 202__ (PATCH WHITELAND PROJECT PHASE II), AND PROVIDING OR OTHERWISE MAKING THE PROCEEDS THEREOF AVAILABLE TO PATCH DEVELOPMENT, LLC, OR AN AFFILIATE OR PERMITTED ASSIGNEE THEREOF, AND AUTHORIZING AND APPROVING OTHER ACTIONS IN RESPECT THERETO

WHEREAS, the Town of Whiteland, Indiana (the “Town”), is a municipal corporation and political subdivision of the State of Indiana and by virtue of Indiana Code 36-7-11.9 and Indiana Code 36-7-12 (collectively, the “Act”), is authorized and empowered to adopt this ordinance (this “Bond Ordinance”) and to carry out its provisions;

WHEREAS, Patch Development, LLC, or an affiliate or permitted assignee thereof (the “Company”), desires to finance the construction of roadway and stormwater improvements for the development of the Patch Economic Development Area as generally contemplated within the Concept Plan for the Patch Whiteland Planned Unit Development District, and other related improvements, as more particularly described in Exhibit A attached hereto and incorporated herein by reference (the “Project”) which will be located in or directly serve and benefit the Patch Economic Development Area and the Patch Phase II Allocation Area;

WHEREAS, the Company has advised the Town’s Economic Development Commission (the “Commission”) and the Town that it proposes that the Town issue its Economic Development Revenue Bonds, Series 202__ (Patch Whiteland Project Phase II), to be completed with the year in which issued, in one or more series, in an aggregate principal amount not to exceed Seven Million Three Hundred Thousand Dollars (\$7,300,000) (the “Bonds”) under the Act and provide or otherwise make available the proceeds of such Bonds to the Company for the purpose of financing the costs of the infrastructure associated with the Project as more particularly described in Exhibit A, including costs of issuance of the Bonds and, if necessary, funding capitalized interest and a reserve for the Bonds;

WHEREAS, the completion of the Project results in the diversification of industry, the creation of jobs and business opportunities in the Town;

WHEREAS, pursuant to Indiana Code 36-7-12-24, the Commission published notice of a public hearing (the “Public Hearing”) on the proposed issuance of the Bonds to finance the public infrastructure associated with the Project;

WHEREAS, on August 8, 2023, the Commission held the Public Hearing on the Project;

WHEREAS, the Commission has performed all actions required of it by the Act preliminary to the adoption of this Bond Ordinance and has approved and forwarded to the Town Council the forms of: (1) a Financing Agreement between the Town and the Company; (2) a Trust Indenture between the Town and a corporate trustee to be selected by the Town Council

President and acceptable to the Company (the “Trustee”) (the “Indenture”); (3) the form of the Bonds (included within the form of Indenture); (4) the Bond Purchase Agreement between the Town and the purchaser of the Bonds (the “Purchase Agreement”); and (5) this Bond Ordinance (the Financing Agreement, the Indenture, the Bonds, the Purchase Agreement and this Bond Ordinance, collectively, the “Financing Agreements”);

WHEREAS, in connection with and in consideration of the incentives to be provided by the Town of Whiteland Redevelopment Commission (the “Redevelopment Commission”) to the Company, it is anticipated that the Town, the Redevelopment Commission, and the Company and its affiliates will enter into an amendment to the existing Amended and Restated Project Agreement dated December 14, 2022, among the Town, the Redevelopment Commission, and the Company and its affiliates (the “Project Agreement Amendment”);

WHEREAS, it is anticipated that the Redevelopment Commission will, pursuant to a Resolution to be adopted by the Redevelopment Commission (the “Pledge Resolution”), pledge TIF Revenues from the Patch Phase II Allocation Area (the “Pledged TIF Revenues”) to the payment of debt service on the Bonds as contemplated within the Financing Agreements and the Project Agreement Amendment (the “Pledge”), and the Town Council desires to approve such Pledge.

WHEREAS, the Town previously issued its Town of Whiteland, Indiana Economic Development Revenue Bonds, Series 2022A (Patch Whiteland Project) (the “Series 2022A Bonds”), and its Taxable Economic Development Revenue Bonds, Series 2022B (Patch Whiteland Project) (the “Series 2022B Bonds,” and together with the Series 2022A Bonds, the “Series 2022 Bonds”), and provided the proceeds of such Series 2022B Bonds to the Company to help finance certain prior projects of the Company;

WHEREAS, the Series 2022 Bonds were secured in part by certain incremental revenue generated in the Phase I Patch Allocation Area;

WHEREAS, the Town and the Redevelopment Commission are in the process of making certain revisions to the Phase I Patch Allocation Area, which will expand the Phase I Patch Allocation Area; and

WHEREAS, the expansion of the Phase I Patch Allocation Area may necessitate the supplementation or amendment of certain of the financing agreements entered into in connection with the issuance of the Series 2022 Bonds including but not limited to: (i) the Trust Indenture between the Town and Regions Bank as Trustee dated as of December 1, 2022 (the “2022 Indenture”), and (ii) the Financing Agreement between the Company and the Town dated December 1, 2022 (the “2022 Financing Agreement” and together with the 2022 Indenture, the “2022 Financing Agreements”), and the Town Council desires to authorize such 2022 Financing Agreements;

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

Section 1. Findings; Public Benefits. The Town Council hereby finds and determines that the Project involves the acquisition, construction and equipping of an “economic

development facility” as that phrase is used in the Act; that the Project will increase employment opportunities and increase diversification of economic development in the Town, will improve and promote the economic stability, development and welfare in the Town, will encourage and promote the expansion of industry, trade and commerce in the Town and the location of other new industries in the Town; that the public benefits to be accomplished by this Bond Ordinance, in tending to overcome insufficient employment opportunities and insufficient diversification of industry, are greater than the cost of public services (as that phrase is used in the Act) which will be required by the Project; and, therefore, that the financing of the Project by the issue of the Bonds under the Act (i) will be of benefit to the health and general welfare of the Town and (ii) complies with the Act.

Section 2. Approval of Financing. The proposed financing of the public infrastructure for the Project by the issuance of the Bonds under the Act, in the form that such financing was approved by the Town’s Economic Development Commission, is hereby approved.

Section 3. Authorization of the Bonds. The issuance of the Bonds, in one or more series, payable solely from revenues and receipts derived from the Financing Agreements, is hereby authorized.

Section 4. Terms of the Bonds. (a) The Bonds in the aggregate principal amount not to exceed Seven Million Three Hundred Thousand Dollars (\$7,300,000), shall (i) be executed at or prior to the closing date by the manual or facsimile signatures of the Town Council President and the Clerk-Treasurer of the Town; (ii) be dated as of the date of their delivery; (iii) mature on a date not later than twenty-five (25) years after the date of issuance; (iv) bear interest at such rates as determined with the purchaser of the Bonds in the Purchase Agreement; (v) be issuable in such denominations as set forth in the Financing Agreements; (vi) be issuable only in fully registered form; (vii) be subject to registration on the bond register as provided in the Indenture; (viii) be payable in lawful money of the United States of America; (ix) be payable at an office of the Trustee as provided in the Indenture; (x) be subject to optional redemption prior to maturity and subject to redemption as otherwise provided in the Financing Agreements; (xi) be issued in one or more series; and (xii) contain such other terms and provisions as may be provided in the Financing Agreements. The Bonds may be issued as taxable or tax-exempt for purposes of federal income taxation, as determined by the Town Council President and Clerk-Treasurer of the Town, prior to the issuance of the Bonds, with the advice of the Town’s bond counsel.

(b) The Bonds and the interest thereon do not and shall never constitute an indebtedness of, or a charge against the general credit or taxing power of, the Town, but shall be special and limited obligations of the Town, payable solely from revenues and other amounts derived from the Financing Agreements. Forms of the Financing Agreements are before this meeting and are by this reference incorporated in this Bond Ordinance, and the Clerk-Treasurer of the Town is hereby directed, in the name and on behalf of the Town, to insert them into the minutes of the Town Council and to keep them on file.

Section 5. Sale of the Bonds. The Town Council President and the Clerk-Treasurer of the Town are hereby authorized and directed, in the name and on behalf of the Town, to sell the Bonds to the purchaser at the price, in the manner and at the time set forth in the Purchase

Agreement, at such prices as are determined on the date of sale and approved by the Town Council President and the Clerk-Treasurer of the Town.

Section 6. Execution and Delivery of Financing Agreements. The Town Council President and the Clerk-Treasurer of the Town are hereby authorized and directed, in the name and on behalf of the Town, to execute or endorse and deliver the Financing Agreement, the Indenture, the Purchase Agreement and the Bonds, submitted to the Town Council, which are hereby approved in all respects.

Section 7. Changes in Financing Agreements. The Town Director of Administration, the Town Council President and the Clerk-Treasurer of the Town are hereby authorized, in the name and on behalf of the Town, without further approval of the Town Council or the Commission, to approve such changes in the Financing Agreements as may be permitted by the Act, such approval to be conclusively evidenced by their execution thereof.

Section 8. Project Agreement Amendment. The Town Council hereby authorizes the execution of a Project Agreement Amendment in a form approved by the Town Director of Administration, President of the Town Council, and the Clerk-Treasurer as evidenced by their execution of such document, with the advice of the Town Attorney and the Town's bond counsel.

Section 9. Pledged TIF Revenues. The Town Council hereby approves the Pledge of the Pledged TIF Revenues to the payment of debt service on the Bonds as contemplated within the Financing Agreements and the Project Agreement Amendment, and as set forth in the Pledge Resolution.

Section 10. 2022 Financing Agreements. The Town Council President and the Clerk-Treasurer of the Town are hereby authorized, in the name and on behalf of the Town, without further approval of the Town Council or the Commission, to approve and execute any supplements or amendments to the 2022 Financing Agreements and any related documents in connection with the expansion of the Phase I Patch Allocation Area, in order to evidence such expansion within the 2022 Financing Agreements and any such other related documents, with such approval to be conclusively evidenced by their execution thereof.

Section 11. General. The Town Council President and the Clerk-Treasurer of the Town, and each of them, are hereby authorized and directed, in the name and on behalf of the Town, to execute or endorse any and all agreements (including any taxpayer agreements), documents and instruments, perform any and all acts, approve any and all matters, and do any and all other things deemed by them, or either of them, to be necessary or desirable in order to carry out and comply with the intent, conditions and purposes of this Bond Ordinance (including the preambles hereto and the documents mentioned herein), the Project, the issuance and sale of the Bonds, and the securing of the Bonds under the Financing Agreements, and any such execution, endorsement, performance or doing of other things heretofore effected by, and hereby is, ratified and approved.

Section 12. Binding Effect. The provisions of this Bond Ordinance and the Financing Agreements shall constitute a binding contract between the Town and the holders of the Bonds,

and after issuance of the Bonds this Bond Ordinance shall not be repealed or amended in any respect which would adversely affect the rights of the holders of the Bonds as long as the Bonds or interest thereon remains unpaid.

Section 13. Repeal. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 14. Effective Date. This Bond Ordinance shall be in full force and effect immediately upon adoption.

Section 15. Copies of Financing Agreements on File. Two copies of the Financing Agreements incorporated into this Bond Ordinance were duly filed in the office of the Clerk-Treasurer of the Town, and are available for public inspection in accordance with Indiana Code 36-1-5-4.

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EXHIBIT A

Description of Project

Gateway at Whiteland – Phase II

The Project:

The Project consists of the construction of roadway and stormwater improvements for the development of the Patch Economic Development Area as generally contemplated within the Concept Plan for the Patch Whiteland Planned Unit Development District, and other related improvements, to be generally located at the southwest corner of Whiteland Rd and Graham Rd in the Town of Whiteland. The Project includes the Public Infrastructure Improvements described below. The proceeds of the Bonds will only be provided to the Company for costs of the Public Infrastructure Improvements described below and for no other costs of the Project.

The Public Infrastructure Improvements:

(A) Public Infrastructure Improvements to be Dedicated to the Town - In connection with the construction of the Project, public infrastructure will be required and will be constructed by the Company including roads, road right of way, road widening and related improvements to Graham Rd, pedestrian walk paths along Graham Rd and internal public roads, stormwater improvements (excluding ponds), water main loop and sanitary sewer extension, and including, without limitation, all infrastructure needed to serve the use and development of the Public Safety and Park Property. All Public Infrastructure Improvements to be dedicated to the Town shall be constructed in accordance with the Town's standards, shall serve one or more essential governmental functions of the Town and when completed shall be dedicated or transferred by the Company to the Town.

(B) Public Infrastructure Improvements that will remain Property of the Company or be conveyed to or the property of other entities (Retention Pond and Other Public Utility Improvements) - In connection with the construction of the Project, stormwater retention and/or detention pond infrastructure will be required and will be constructed by the Company along with other public utility infrastructure improvements serving the Project that will not be dedicated or transferred to the Town, and including, without limitation, all infrastructure needed to serve the use and development of the Public Safety and Park Property. The proceeds of the Bonds (taxable) will be provided to the Company for the Retention Pond and Other Public Utility Improvements that do not otherwise qualify for tax-exempt financing.

DULY ADOPTED on this 8 day of August, 2023, by a vote of 5 in favor and 0 against.

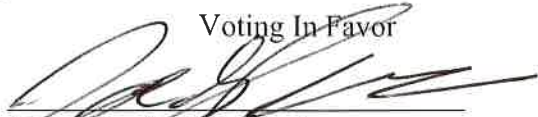
TOWN OF WHITELAND, INDIANA TOWN COUNCIL



Joseph Sayler, President

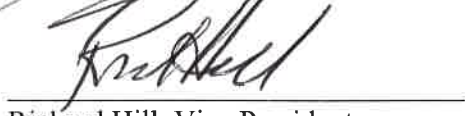
Voting In Favor

Voting Opposed



Joseph Sayler, President

Joseph Sayler, President



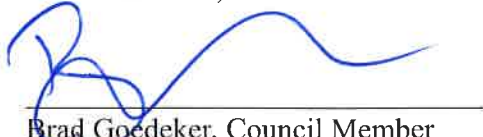
Richard Hill, Vice President

Richard Hill, Vice President



David Hawkins, Council Member

David Hawkins, Council Member



Brad Goedecker, Council Member

Brad Goedecker, Council Member



Laura Fleury, Council Member

Laura Fleury, Council Member

ATTEST:



Debra Hendrickson, Clerk-Treasurer