

AMENDED AND RESTATED ORDINANCE NO. 2023-5A

ORDINANCE AUTHORIZING HANCOCK COUNTY,
INDIANA TO FUND ITS "TAXABLE ECONOMIC
DEVELOPMENT REVENUE NOTES, SERIES 2023
(HANCOCK 13 RRL, LLC)" AND APPROVING AND
AUTHORIZING OTHER ACTIONS IN RESPECT THERETO

An ordinance of the County Council of Hancock County, Indiana ("Council") authorizing the funding of its Hancock County, Indiana ("County") Taxable Economic Development Revenue Note, Series 2023 (Hancock 13 RRL, LLC) ("Series 2023 Note") in an amount not to exceed One Million Five Hundred Thousand Dollars (\$1,500,000) ("Loan") and approving and authorizing other actions in respect thereto.

WHEREAS, Indiana Code 36-7-11.9 and 12 (collectively, "Act") declares that the financing and refinancing of economic development facilities constitutes a public purpose;

WHEREAS, pursuant to the Act, the County is authorized to make loans for the purpose of financing, reimbursing or refinancing all or a portion of the costs of acquisition, construction, renovation, installation and equipping of economic development facilities in order to foster diversification of economic development and creation or retention of opportunities for gainful employment in or near the County;

WHEREAS, Hancock 13 RRL, LLC ("Borrower") has informed the County that it will be constructing certain economic development facilities consisting of the construction of up to approximately three (3) separate buildings totaling approximately 2.2 million square feet of flexible industrial space, a real property investment of up to approximately \$135 million and the creation of up to approximately 1,100 full-time jobs (collectively, "Facilities") and the County intends to make the Loan for the purpose of financing or reimbursing the Borrower for the costs of the construction and reconstruction of Buck Creek Road, together with public sanitary sewer

and water lines and facilities contiguous to Buck Creek Road, and with all necessary appurtenances, related improvements and equipment and incidental expenses in connection therewith (collectively, "Project");

WHEREAS, the Project will be located in or physically connected to the Mt. Comfort Corridor Economic Development Area ("Area") and will be in, serving or benefitting the Mt. Comfort North Allocation Area No. 1 ("North Allocation Area") and the West Allocation Area, if created ("West Allocation Area" and, collectively with the North Allocation Area, the "Allocation Area") as established by the Hancock County Redevelopment Commission ("Redevelopment Commission");

WHEREAS, the Hancock County Economic Development Commission ("Commission") has rendered its Project Report regarding the issuance and funding of the Series 2023 Note from the County to the Borrower to finance a portion of the Project and the Project Report has been or will be submitted to the Hancock County Area Plan Commission and the Superintendent of the Mt. Vernon Community School Corporation;

WHEREAS, the Commission conducted a public hearing and adopted a resolution and Project Report, which resolution and Project Report have been transmitted hereto, finding that the financing of a portion of the Project complies with the purposes and provisions of IC 36-7-11.9 and -12 and that such financing will be of benefit to the health and welfare of the County and its citizens;

WHEREAS, the Commission has heretofore approved and recommended the adoption of this form of ordinance by this Council, has considered the issue of adverse competitive effect and has approved the forms of and has transmitted for approval by the Council the forgivable loan

agreement between the County and the Borrower (including the form of the Series 2023 Note) dated as of the first day of the month the Series 2023 Note is issued ("Loan Agreement");

WHEREAS, pursuant to and in accordance with the Act, the County desires to provide funds necessary to finance or reimburse a portion of the Project by issuing and funding the Series 2023 Note;

WHEREAS, the County intends to fund the Series 2023 Note and make the Loan consistent with the terms of this ordinance and pursuant to the Loan Agreement;

WHEREAS, no member of the Council has any pecuniary interest in any employment, financing agreement or other contract made under the provisions of the Act and related to the Bonds authorized herein, which pecuniary interest has not been fully disclosed to the Council and no such member has voted on any such matter, all in accordance with the provisions of Indiana Code 36-7-12-16;

WHEREAS, there has been submitted to the Commission for its approval forms of the Series 2023 Note and the Loan Agreement (collectively, "Financing Documents") and a form of this proposed ordinance, which were incorporated by reference in the Commission's resolution following the Commission's public hearing, which resolution has been transmitted to the Council;

WHEREAS, the Redevelopment Commission has pledged TIF Revenues, junior and subordinate to the Outstanding Bonds and any bonds issued in the future on a parity with the Outstanding Bonds (each as defined in the Loan Agreement) on hand, or to be on hand, to the funding of the Series 2023 Note pursuant to the Loan Agreement in three (3) series, with the first series funded in an amount up to \$500,000 payable upon completion of the Project (or, if later, execution of the Loan Agreement), expected to be no later than May 31, 2023, the second series

funded in an amount up to \$500,000 payable on January 31, 2024 and the final series funded in an amount up to \$500,000 payable on July 30, 2024;

WHEREAS, based upon the cash flow of the Redevelopment Commission through the calendar year 2023, and the desire to maintain the County's flexibility to prioritize certain County road projects, it may be necessary for the County Council to fund an amount of the Loan up to \$500,000 on January 31, 2024 or July 30, 2024, to be reimbursed from future TIF Revenues of the Redevelopment Commission;

WHEREAS, based upon the resolution adopted by the Commission pertaining to the Project, the Council hereby finds and determines that the financing and reimbursement approved by the Commission for the Project will be of benefit to the health and general welfare of the citizens of the County, complies with the provisions of the Act and the amount necessary to finance and reimburse a portion of the costs of the Project will require making the Loan and delivering the Series 2023 Note;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY COUNCIL OF HANCOCK COUNTY, INDIANA, THAT:

Section 1. It is hereby found, determined, ratified and confirmed that the financing and reimbursement of the Project, the making of the Loan to the Borrower to be evidenced by the Borrower's Series 2023 Note complies with the purposes and provisions of IC 36-7-11.9 and -12 (collectively, "Act") and: (i) will result in the diversification of industry, the creation of business opportunities and the creation of opportunities for gainful employment within the jurisdiction of the County, (ii) will serve a public purpose, and will be of benefit to the health and general welfare of the County, (iii) complies with the purposes and provisions of the Act and it is in the public interest that the County take such lawful actions as determined to be necessary or desirable to

encourage the diversification of industry, the creation or retention of business opportunities, and the creation or retention of opportunities for gainful employment within the jurisdiction of the County, and (iv) will not have a material adverse competitive effect on any similar facilities already constructed or operating in or near the County.

Section 2. The substantially final forms of the Financing Documents shall be incorporated herein by reference and shall be inserted in the minutes of the Council and kept on file by the Auditor. In accordance with the provisions of IC 36-1-5-4, two (2) copies of the Financing Documents are on file in the office of the Auditor for public inspection.

Section 3. The Project costs will be reimbursed to the Borrower from the Loan. The County shall fund the Loan from TIF Revenues on hand, or to be on hand, junior and subordinate to the Outstanding Bonds and any bonds issued in the future on a parity with the Outstanding Bonds, pledged by the Redevelopment Commission to the Borrower in the maximum amount not to exceed One Million Five Hundred Thousand Dollars (\$1,500,000), payable in three (3) series of up to \$500,000 each, with the first series payable upon completion of the Project, expected to be no later than April 30, 2023, the second series payable on January 31, 2024 and the final series payable on July 30, 2024. In no event shall the aggregate amount of the three series exceed the actual cost of the Project. The County Council hereby agrees to fund up to \$500,000 of the Loan on January 31, 2024 or July 30, 2024 from funds chosen by the County Council, upon the advice of its municipal advisor, to be reimbursed in full from the first available future TIF Revenues not needed to fund road improvements prioritized by the County, such full reimbursement expected to be no later than December 31, 2024. To the extent the representation in Section 2.2(i) of the Loan Agreement is met, payment on each series of the Loan shall be forgiven. If the representation in Section 2.2(i) is not met, the Loan shall not be funded by the County and the Loan Agreement

shall terminate and be of no further force and effect. The Series 2023 Note shall not accrue interest. The Series 2023 Note shall never constitute a general obligation of, an indebtedness of, or charge against the general credit of the County. The Series 2023 Note shall not be subject to optional redemption prior to maturity.

Section 4. The Board of Commissioners and the Auditor are authorized and directed to execute the Financing Documents, such other documents approved or authorized herein and any other document which may be necessary, appropriate or desirable to consummate the transactions contemplated by the Financing Documents and this ordinance, and their execution is hereby confirmed on behalf of the County. The Board of Commissioners and the Auditor are authorized to arrange for the delivery of such Series 2023 Note to the Borrower, payment for which will be made in the manner set forth in the respective Financing Documents. The Board of Commissioners and the Auditor may, by their execution of the Financing Documents requiring their signatures and imprinting of their facsimile signatures thereon, approve any and all such changes therein and also in those Financing Documents which do not require the signature of the Board of Commissioners and the Auditor without further approval of this Council or the Commission if such changes do not affect terms set forth in Sections 27(a)(1) through and including (a)(10) of the Act.

Section 5. The provisions of this ordinance and the Financing Documents shall constitute a contract binding between the County and the Borrower.

Section 6. The Board of Commissioners and the Auditor, or any other officer having responsibility with respect to the making of the Loan, evidenced by the Series 2023 Note, are authorized and directed, alone or in conjunction with any of the foregoing, or with any other officer, employee, consultant or agent of the County, to deliver a certificate for inclusion in the transcript of proceedings for the Series 2023 Note, setting forth the facts, estimates and

circumstances and reasonable expectations pertaining to the use of the Loan as of the funding date thereof.

Section 7. No recourse under or upon any obligation, covenant, acceptance or agreement contained in this ordinance, the Financing Documents or under any judgment obtained against the County, including without limitation the Commission or Redevelopment Commission, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise, or under any circumstances, under or independent of the Financing Agreement, shall be had against any member, director, or officer or attorney, as such, past, present, or future, of the County, including without limitation the Commission or Redevelopment Commission, either directly or through the County, or otherwise, for the payment for or to the County of any sum that may remain due and unpaid by the County upon any of such Series 2023 Note. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such member, director, or officer or attorney, as such, to respond by reason of any act or omission on his or her part or otherwise for, directly or indirectly, the payment for or to the County or any receiver thereof, or for or to any owner or holder of any sum that may remain due and unpaid upon the Series 2023 Note hereby secured shall be expressly waived and released as a condition of and consideration for the execution and delivery of the Financing Documents and the issuance and funding of the Series 2023 Note.

Section 8. If any section, paragraph or provision of this ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this ordinance.

Section 9. All ordinances, resolutions and orders, or parts thereof, in conflict with the provisions of this ordinance are, to the extent of such conflict, hereby repealed.

Section 10. It is hereby determined that all formal actions of the Council relating to the adoption of this ordinance were taken in one or more open meetings of the Council, that all deliberations of the Council and of its committees, if any, which resulted in formal action, were in meetings open to the public, and that all such meetings were convened, held and conducted in compliance with applicable legal requirements, including Indiana Code 5-14-1.5, as amended.

Section 11. The Board of Commissioners and the Auditor and any other officer of the County are hereby authorized and directed, in the name and on behalf of the County, to execute and deliver such further documents and to take such further actions as such person deems necessary or desirable to effect the purposes of this ordinance, and any such documents heretofore executed and delivered and any such actions heretofore taken, be, and hereby are, ratified and approved.

Section 12. This ordinance shall be in full force and effect from and after its passage.

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Passed and adopted by the Hancock County Council this 10th day of May 2023.

HANCOCK COUNTY COUNCIL

NAY

Scott Waldie

Juanne Gray

Presiding Officer

[Signature]

J. Kelly

Mary Nae

Robin Bowden

Paul J. Frost

Attest:

Dennis A. Carne

Auditor