

METROPOLITAN DEVELOPMENT COMMISSION

OF

MARION COUNTY, INDIANA

RESOLUTION NO. 2023-E-037

**A RESOLUTION OF THE REDEVELOPMENT DISTRICT OF THE
CITY OF INDIANAPOLIS, INDIANA PLEDGING TAX INCREMENT FROM THE
PENN ELECTRIC ALLOCATION AREA TO THE PAYMENT OF CERTAIN
ECONOMIC DEVELOPMENT REVENUE BONDS**

WHEREAS, the Metropolitan Development Commission of Marion County, Indiana, acting as the Redevelopment Commission of the City of Indianapolis, Indiana (the “Commission”), being the governing body of the Redevelopment District of the City of Indianapolis, Indiana (the “District”), exists and operates pursuant to the provisions of Indiana Code 36-7-15.1 and Indiana Code 36-7-25, each as amended from time to time (collectively, the “Act”); and

WHEREAS, the Commission, on behalf of the District, has previously adopted and confirmed resolutions (collectively, the “Declaratory Resolution”) which (i) declared and confirmed an area of the City of Indianapolis, Indiana (the “City”), known as the Near North Mass Economic Development Area (the “Economic Development Area”), to be an “economic development area” within the meaning of Indiana Code 36-7-15.1, as amended, (ii) designated a portion of such Economic Development Area as an allocation area known as the Penn Electric Allocation Area (the “Allocation Area”), for purposes of the Indiana Code 36-7-15.1-26, and (iii) created the Penn Electric Allocation Fund (the “Allocation Fund”), pursuant to Indiana Code 36-7-15.1-26, into which taxes on real property located in the Allocation Area are to be deposited in accordance with, and for the purposes stated in, the Act and the Declaratory Resolution (such deposited taxes, herein the “Tax Increment”), and adopted an economic development plan for the Economic Development Area (the “Plan”); and

WHEREAS, Penn Electric Partners LLC, and/or one or more subsidiaries, affiliates, designees and/or joint ventures thereof (collectively, the “Developer”), desires to finance certain projects, additions or improvements within the Allocation Area, including all or any portion of the Project (as defined herein); and

WHEREAS, the City intends to enter into a Financing Agreement (the “Financing Agreement”) and a Project Agreement (the “Project Agreement”) with the Developer in connection with the Developer’s development and construction of the Project; and

WHEREAS, the Developer desires to finance the Project (as hereinafter defined) consisting of an office and retail development with approximately 25,463 square feet of office space and approximately 8,015 square feet of restaurant space (collectively, the “Project”); and

WHEREAS, the Commission has been advised that the City intends to authorize and issue certain economic development revenue bonds of the City, in one or more series, all or any portion of which may be taxable or tax-exempt for federal income tax purposes, designated as the “City of Indianapolis, Indiana, Economic Development Tax Increment Revenue Bonds, Series 2023 (Penn Electric Project)” in one or more tax-exempt or taxable series (with such additional or different series designation as may be necessary, desirable or appropriate, including such series designation to indicate the year in which the bonds are issued), in an aggregate principal amount not to exceed Three Million Dollars (\$3,000,000) (the “Bonds”), for the purposes of providing funds to pay for (a) the financing of all or a portion of the Project, in accordance with the terms of the Financing Agreement, the Project Agreement, and other such documents as deemed necessary; (b) capitalized interest (if necessary); (c) a debt service reserve (if necessary); and (d) costs and expenses incurred in connection with or on account of the issuance of the Bonds authorized herein, and the proceeds of the Bonds will be deposited with a financial institution serving as trustee pursuant to a trust indenture (the “Indenture”) between the City and such trustee and disbursed to the Developer for costs of a portion of the construction of the Project, as provided for in the Indenture, the Financing Agreement and the Project Agreement; and

WHEREAS, the Bonds will be payable from the lesser of eighty percent (80%) of the Tax Increment revenues received from the newly created Allocation Area or the amortization amount of the Bonds and considering any prior year shortfalls (the “TIF Revenues”); and

WHEREAS, the remaining 20% of the Tax Increment received from the newly created Allocation Areas (such Tax Increment, herein the “Surplus Tax Increment”) may be pledged to the payment of certain other bonds of the City (the “Infrastructure Bonds”) used to finance certain infrastructure projects to benefit, in part, the Project, and the Bonds may be on parity with or subordinate to the Infrastructure Bonds with respect to the TIF Revenues; and

WHEREAS, pursuant to Indiana Code 36-7-15.1-26(b)(3)(D), the Commission now desires to pledge the TIF Revenues to the payment of the principal of, premium (if any), and interest on the Bonds as the same becomes due.

NOW, THEREFORE, BE IT RESOLVED BY THE METROPOLITAN DEVELOPMENT COMMISSION OF MARION COUNTY, INDIANA, ACTING AS THE REDEVELOPMENT COMMISSION OF THE CITY OF INDIANAPOLIS, INDIANA, AS FOLLOWS:

1. The Commission hereby finds that the pledge of the TIF Revenues to the payment of principal of and interest on the Bonds to finance the Project, will help accomplish the Plan for the Economic Development Area and will promote the economic development of the City and the Economic Development Area.

2. The Commission hereby irrevocably pledges the TIF Revenues (representing the lesser of eighty percent (80%) of the Tax Increment received in the Allocation Area or the amortization amount of the Bonds and considering any prior year shortfalls) to the payment of principal of and interest on the Bonds in accordance with and subject to the terms and conditions

of the Financing Agreement, the Project Agreement and the Indenture, and the Bonds may be issued on parity with or subordinate to the Infrastructure Bonds.

3. The Commission and the District hereby covenant that on or before one (1) business day prior to each Interest Payment Date (as defined in the Indenture), the trustee shall deposit all TIF Revenues (as received from the Controller, acting on behalf of the Redevelopment Commission) into the Bond Fund (as defined in the Indenture), but no more than shall be necessary for the payment of the principal of and interest on the Bonds on the immediately succeeding Interest Payment Date (taking into consideration any amounts currently deposited therein and any prior year shortfall amounts), together with Annual Fees (as defined in the Indenture) coming due within the next six (6) months.

4. Other than potentially the Infrastructure Bonds, there are no other prior liens, encumbrances or other restrictions on the Commission's ability to pledge the TIF Revenues to the payment of the Bonds. The Surplus Tax Increment not constituting TIF Revenues hereunder may be used by the Commission for any purpose permitted by law, including the payment of the Infrastructure Bonds, the release of such Surplus Tax Increment to the taxing units in the Allocation Area as provided under the Act and the pledge of the Surplus Tax Increment to additional obligations of the District.

5. So long as the Bonds remain outstanding, the Commission shall not make any further pledges of the TIF Revenues without the prior written consent of the holders of the Bonds. As set forth in Section 4, the Commission may use the Surplus Tax Increment for any purposes permitted by the Act, including making pledges thereof to obligations (which pledges could be parity or senior), without the consent of the holders of the Bonds.

6. In connection with the Project, the Commission hereby authorizes any officer of the Commission or the Department of Metropolitan Development ("DMD") to enter into a one or more project agreement and financing agreement with the Developer and/or such other entities as may be necessary, desirable or appropriate, in form and substance and on terms and conditions acceptable to such officer of the Commission or DMD, together with any and all changes as may be necessary, desirable or appropriate, which shall be evidence by such officer's execution thereof.

7. If any section, paragraph or provision of this Resolution 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 Resolution.

8. All resolutions and orders, or parts thereof, in conflict with the provision of this Resolution, are, to the extent of such conflict, hereby repealed or amended.

9. This Resolution shall be in full force and effect immediately upon its passage and signing. The Secretary of the Commission is hereby directed to deliver a certified copy of this Resolution to the Controller of the City.

10. The Mayor, the Controller and any other officer of the City and the Commission are hereby authorized and directed, in the name and on behalf of the City, acting for and on behalf of the District, to execute and deliver such further documents and to take such further actions as such person deems necessary, desirable or appropriate to effect the purposes of this Resolution, and any such documents heretofore executed and delivered and any such actions heretofore taken, be, and hereby are, ratified and approved.

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ADOPTED AND APPROVED at a meeting of the Metropolitan Development Commission of Marion County, Indiana, held on the 6th day of September, 2023.

METROPOLITAN DEVELOPMENT COMMISSION OF
MARION COUNTY, INDIANA, acting as the Redevelopment
Commission of the City of Indianapolis, Indiana

John J. Dillon III, President

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.

/s/ Scott A. Krapf
Scott A. Krapf
Frost Brown Todd LLP

This Resolution prepared by Scott A. Krapf, Frost Brown Todd LLP, 111 Monument Circle, Suite 4500, Indianapolis, Indiana 46204.