

FINANCING AGREEMENT

BETWEEN

PASARE, LLC

AND THE

TOWN OF AVON, INDIANA

Dated as of _____, 2024

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FINANCING AGREEMENT

This FINANCING AGREEMENT, dated as of _____, 2024 (the "Financing Agreement") is between PASARE, LLC ("Pasare") and the TOWN OF AVON, INDIANA, a municipal corporation duly organized and validly existing under the laws of the State of Indiana (the "Issuer").

PRELIMINARY STATEMENT

WHEREAS, Indiana Code Title 36, Article 7, Chapters 11.9 and 12, as supplemented and amended, authorizes and empowers the Issuer to enter into agreements with companies to allow companies to construct economic development facilities and vests the Issuer with powers that may be necessary to enable it to accomplish such purposes; and

WHEREAS, after giving notice in accordance with the Act and IC 5-3-1, the Avon Economic Development Commission held a public hearing and the Issuer, upon finding that the Project (as defined herein) and the proposed financing of the acquisition, construction, equipping, installation and improvement thereof will retain and increase employment opportunities in the Town; will benefit the health and general welfare of the citizens of the Town and the State of Indiana; and will comply with the purposes and provisions of the Act; and adopted a resolution approving the proposed financing; and

WHEREAS, the Issuer intends to issue its (i) Economic Development Revenue Bonds, Series 2024A (Easton Grey Project) ("Series A Bonds"), and (ii) Taxable Junior Economic Development Revenue Bonds, Series 2024B (Easton Grey Project) ("Series B Bonds") (collectively, the "Bonds"), and intends to provide the proceeds of the Bonds pursuant to the provisions of this Financing Agreement to Pasare or its successor or assigns for the purposes of assisting in financing the Project to be developed by Pasare in or serving or physically connected to the Phase 1A Riverwalk District Allocation Area; and

WHEREAS, this Financing Agreement provides for the use of the financing by Pasare through the issuance of the Bonds by the Town; and

WHEREAS, the Bonds will be payable solely from a portion of tax increment revenues of the Issuer's Redevelopment Commission located on certain parcels of Pasare's Project in a designated area known as the "Phase 1A Riverwalk District Allocation Area," and, as to the Series A Bonds, from Taxpayer Payments (as defined herein);

In consideration of the premises, and other good and valuable consideration, the receipt of which is hereby acknowledged, Pasare and the Issuer hereby further covenant and agree as follows:

ARTICLE I

DEFINITIONS AND EXHIBITS

Section 1.1. Terms Defined . As used in this Financing Agreement, the following terms shall have the following meanings unless the context clearly otherwise requires:

"Act" means, collectively, Indiana Code 36-7-11.9 and 36-7-12.

"Allocation Area" means the Phase 1A Riverwalk District Allocation Area established as an allocation area by the Redevelopment Commission, all in accordance with IC 36-7-14-39 and IC 37-7-14-39.3 for the purposes of capturing incremental *ad valorem* real property taxes levied and collected in such allocation area.

"Annual Fees" means annual and ongoing fees relating to payment of debt service on the Series 2024 Bonds in an amount not to exceed \$10,000 annually.

"Bond Fund" means the Town of Avon, Indiana - Pasare Project Bond Fund.

"Bondowners" or any similar term means the owner of the Bonds.

"Bonds" means, collectively, the (i) Economic Development Revenue Bonds, Series 2024A (Easton Grey Project), and (ii) Taxable Junior Economic Development Revenue Bonds, Series 2024B (Easton Grey Project).

"Commission" means the Avon Redevelopment Commission.

"Issuer" means the Town of Avon, Indiana, a municipal corporation duly organized and validly existing under the laws of the State.

"Pasare" means Pasare, LLC, an Indiana limited liability company, or any successors or assigns thereto.

"Pledge Resolution" means the resolution of the Commission adopted on October 21, 2024, pledging TIF Revenues to the Bonds.

"Project" means the construction as set forth in the Project Agreement in or serving or physically connected to the Avon Economic Development Area and located within the Allocation Area.

"Project Agreement" means that certain agreement by and among the Issuer, the Avon Redevelopment Commission, the Avon Economic Development Commission and Pasare, dated January 16, 2024.

"Redevelopment Commission" means the Town of Avon Redevelopment Commission.

"State" means the State of Indiana.

"Taxpayer Payments" means the Taxpayer Payments as defined in the Taxpayer Agreement attached hereto as Exhibit A.

"TIF Revenues" means the property tax proceeds received by the Redevelopment Commission and pledged to the Issuer pursuant to a resolution adopted by the Redevelopment Commission on October 21, 2024, from the assessed valuation of certain parcels of real property in the Allocation Area, in excess of the assessed valuation described in IC 36-7-14-39(b)(1), as such statutory provision exists on the date of execution of this Financing Agreement.

"Town" means the Town of Avon, Indiana.

Section 1.2. Rules of Interpretation . For all purposes of this Financing Agreement, except as otherwise expressly provided, or unless the context otherwise requires:

(a) "This Financing Agreement" means this instrument as originally executed and as it may from time to time be supplemented or amended pursuant to the applicable provisions hereof.

(b) All references in this instrument to designated "Articles," "Sections" and other subdivisions are to the designated Articles, Sections and other subdivisions of this instrument as originally executed. The words "herein," "hereof" and "hereunder" and other words of similar import refer to this Financing Agreement as a whole and not to any particular Article, Section or other subdivision.

(c) The terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular and the singular as well as the plural.

(d) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles as consistently applied.

(e) The terms defined elsewhere in this Financing Agreement shall have the meanings therein prescribed for them.

(End of Article I)

ARTICLE II

REPRESENTATIONS; USE OF PROCEEDS

Section 2.1. Representations by Issuer . Issuer represents and warrants that:

(a) The Issuer is a municipal corporation organized and existing under the laws of the State. Under the provisions of the Act, the Issuer is authorized to enter into the transactions contemplated by this Financing Agreement and to carry out its obligations hereunder. The Issuer has been duly authorized to execute and deliver this Financing Agreement. The Issuer agrees that it will do or cause to be done all things within its control and necessary to preserve and keep in full force and effect its existence.

(b) The Issuer shall issue its Bonds to provide funds to Pasare to enable it to act as the Issuer's agent to install infrastructure for the benefit of the public and other Project costs, subject to the consideration of the execution and delivery of this Financing Agreement, to expand employment opportunities in the Town and to benefit the health and general welfare of the citizens of the Town and the State of Indiana.

Section 2.2. Representations by Pasare . Pasare represents and warrants that:

(a) It is an Indiana limited liability company validly existing under the laws of Indiana, duly qualified to do business in Indiana, is not in violation of any laws in any manner material to its ability to perform its obligations under this Financing Agreement, and has full power to enter into and by proper action has duly authorized the execution and delivery of this Financing Agreement.

(b) The provision of financial assistance to be made available to it under this Financing Agreement from the proceeds of the Bonds and the commitments therefor made by the Issuer have induced Pasare to undertake the Project and such Project will increase employment opportunities within the boundaries of Town.

(c) Neither the execution and delivery of this Financing Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Financing Agreement conflicts with or results in a breach of the terms, conditions or provisions of Pasare's Articles of Organization or any restriction or any agreement or instrument to which Pasare is now a party or by which it is bound or to which any of its property or assets is subject or (except in such manner as will not materially impair the ability of Pasare to perform its obligations hereunder) of any statute, order, rule or regulation of any court or governmental agency or body having jurisdiction over Pasare or its property, or constitutes a default under any of the foregoing, except as set forth in this Financing Agreement.

(d) There are no actions, suits or proceedings pending nor, to the knowledge of Pasare, threatened before any court, administrative agency or arbitrator which, individually or in the aggregate, might result in any material adverse change in the financial condition of Pasare or might impair the ability of Pasare to perform its obligations under this Financing Agreement.

(e) No event has occurred and is continuing which with the lapse of time or the giving of notice would constitute an event of default under this Financing Agreement.

(f) To the extent that the TIF Revenues received by the Issuer are insufficient to pay such amounts, Pasare agrees to pay the Annual Fees; provided, however, that Pasare may, without creating a default under this agreement, contest in good faith the necessity for any extraordinary services and expenses and the reasonableness of any such fees, charges or expenses.

(End of Article II)

ARTICLE III

PARTICULAR COVENANTS OF THE ISSUER AND PASARE

Section 3.1. Payment of Principal (a) . The Bonds are payable from TIF Revenues as pledged to the Issuer by the Redevelopment Commission pursuant to the Pledge Resolution and, as to the Series A Bonds, from Taxpayer Payments. Under no circumstances shall Pasare be liable for making any payments due under the Bonds. The Issuer shall deposit in the Bond Fund (as defined in the Pledge Resolution), on or before each April 1 and October 1, all of the TIF Revenues available, to pay as much principal as possible due on the Bonds on the next April 1 or October 1.

Section 3.2. Maintenance of Existence . Pasare agrees that, at least through the last Payment Date set forth in the Bonds, it will maintain its existence as a limited liability company, will not dissolve or otherwise dispose of all or substantially all of its assets, and will not consolidate with or merge into another entity, or permit one or more other companies to consolidate or merge with it; provided, however, that Pasare may, without violating the agreement contained in this Section, consolidate or merge with another entity, permit one or more other entities to consolidate or merge into it, or transfer to another entity organized under the laws of one of the states of the United States all or substantially all of its assets as an entirety and thereafter dissolve, provided that (a) the surviving, resulting or transferee entity, as the case may be, is organized under the laws of one of the states of the United States, and (b) such entity assumes in writing all of the obligations of Pasare herein, including the obligations of Pasare under this Financing Agreement.

Section 3.3. Indemnity Pasare will pay, and protect, indemnify and save the Issuer (including members, directors, officials, officers, agents, attorneys and employees thereof), and the Bondowners harmless from and against, all third party liabilities, losses, damages, costs, expenses , causes of actions, suits, claims, demands and judgments of any nature directly arising from or directly relating to:

- (a) Any material violation by Pasare of any material agreement or material condition of this Financing Agreement;
- (b) Any material violation of any material contract, agreement or restriction by Pasare relating to the Project, or a part thereof;
- (c) Any material violation of any material law, ordinance or regulation by Pasare arising out of the ownership, occupancy or use of the Project, or a part thereof;
- (d) Any grossly negligent act by Pasare or any of Pasare's agents, contractors, servants, employees or licensees but solely to the extent such act was undertaken in their capacity as agents, contractors, servants, employees or licensees of Pasare; and
- (e) The provision of any material information or certification furnished by Pasare to the Bondowners in connection with the Project or entering into of the Bonds.

The foregoing shall not be construed to prohibit Pasare from pursuing its remedies against the Issuer for damages to Pasare resulting from personal injury or property damage caused by the intentional misrepresentation or misconduct of the Issuer.

(End of Article III)

ARTICLE IV

EVENTS OF DEFAULT AND REMEDIES THEREFOR

Section 4.1. Events of Default (a) .

(a) It shall be an Event of Default upon the failure of Pasare to perform any covenant, condition or provision hereof and to remedy such default within 30 days after notice thereof from the Issuer to Pasare, unless the Issuer shall have consented thereto, or for such longer period as may be reasonably necessary to cure such failure, so long that in the latter case, Pasare has demonstrated to the Issuer that (A) it is proceeding, and will proceed, with reasonable diligence to cure or cause to be cured such failure and (B) its actions can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time.

(b) During the occurrence and continuance of any event of default hereunder, the Issuer, and in addition to the rights retained by the Issuer as provided in Section 4.1(c) hereof, the Issuer shall have the rights and remedies hereinafter set forth, in addition to any other remedies herein or by law provided. The Issuer may in its discretion proceed to protect and enforce its rights by a suit or suits in equity or at law, whether for damages or for the specific performance of any covenant or agreement contained in this Financing Agreement or in aid of the execution of any power herein granted, or for the enforcement of any other appropriate legal or equitable remedy, as it shall deem most effectual to protect and enforce any of its rights or duties hereunder. If after any event of default occurs and prior to the Issuer exercising any of the remedies provided in this Financing Agreement, Pasare will have completely cured such default, and shall have provided the Issuer with evidence thereof, then in every case such default will be waived, rescinded and annulled by the Issuer by written notice given to Pasare. No such waiver, annulment or rescission will affect any subsequent default or impair any right or remedy consequent thereon.

(c) Notwithstanding anything herein to the contrary, during the occurrence and continuance of an event of default by Pasare arising from a breach of representations as set forth in Section 2.2 hereof, the Issuer may in its discretion, proceed to protect and enforce its rights under this Agreement by a suit or suits in equity or at law, whether for damages or for specific performance.

Section 4.2. Remedies Cumulative . No remedy herein conferred upon or reserved to the Issuer is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

Section 4.3. Delay or Omission Not a Waiver . No delay or omission of the Issuer to exercise any right or power accruing upon any event of default shall impair any such right or power, or shall be construed to be a waiver of any such event of default or an acquiescence therein; and every power and remedy given by this Financing Agreement to the Issuer may be exercised from time to time and as often as may be deemed expedient by the Issuer.

(End of Article IV)

ARTICLE V

IMMUNITY

Section 5.1. Extent of Covenants of the Issuer; No Personal Liability . No recourse shall be had for the payment of the principal of the Bonds or for any claim based thereon or upon any obligation, covenant or agreement contained in the Bonds or this Financing Agreement against any past, present or future member, director, officer, agent, attorney or employee of the Issuer, or any incorporator, member, director, officer, employee, agent, attorney or trustee of any successor thereto, either directly or through the Issuer or any successor thereto, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such incorporator, member, director, officer, employee, agent, attorney or trustee as such is hereby expressly waived and released as a condition of and consideration for the execution of the this Financing Agreement (and any other agreement entered into by the Issuer with respect thereto) and the issuance of the Bonds.

Section 5.2. Liability of Issuer . Any and all obligations of the Issuer under this Financing Agreement are special, limited obligations of the Issuer, payable solely out of the TIF Revenues derived under this Financing Agreement and as otherwise provided under this Financing Agreement. The obligations of the Issuer hereunder shall not be deemed to constitute an indebtedness or an obligation of the Issuer, the State or any political subdivision or taxing authority thereof within the purview of any constitution limitation or provision, or a pledge of the faith and credit or a charge against the credit or general taxing powers, if any, of the Issuer, the State or any political subdivision or taxing authority thereof.

(End of Article V)

ARTICLE VI

SUPPLEMENTS AND AMENDMENTS TO THIS FINANCING AGREEMENT

Section 6.1. Supplements and Amendments to this Financing Agreement . Pasare and the Issuer may from time to time enter into such supplements and amendments to this Financing Agreement as to them may deem necessary or desirable to effectuate the purposes or intent hereof.

(End of Article VI)

Section 7.6. Governing Law . It is the intention of the parties hereto that this Financing Agreement and the rights and obligations of the parties hereunder shall be governed by and construed and enforced in accordance with, the laws of the State.

(End of Article VII)

IN WITNESS WHEREOF, the Issuer and Pasare have caused this Financing Agreement to be executed in their respective names, and the Issuer and Pasare have caused their corporate seals to be hereunto affixed and attested by their duly authorized officers, all as of the date first above written.

PASARE, LLC

By: _____

THE TOWN OF AVON, INDIANA

By: _____
President of the Town Council

ATTEST:

Clerk-Treasurer

[SIGNATURE PAGE OF THE FINANCING AGREEMENT]

EXHIBIT A

Taxpayer Agreement

(Attached)