

ORDINANCE NO. 2020-005

ORDINANCE AUTHORIZING DELAWARE COUNTY,
INDIANA TO ISSUE ITS "ECONOMIC DEVELOPMENT
REVENUE BONDS OF 2020 (BHI PROJECT)" AND
APPROVING AND AUTHORIZING OTHER ACTIONS IN
RESPECT THERETO

WHEREAS, the Delaware County ("County") Economic Development Commission ("Commission") has rendered its Project Report regarding the financing of proposed economic development facilities by Balance Holdings, Inc. or an affiliate thereof ("Company") and the Project Report will be submitted to the Delaware-Muncie Metropolitan Plan Commission for comment thereon;

WHEREAS, the Commission conducted a public hearing on May 13, 2020 and adopted a resolution and Project Report, which resolution and Project Report have been transmitted hereto, finding that the financing of all or a portion of the construction and equipping of the manufacturing and warehouse facilities, various outbuildings, retail and commercial space, including building construction and improvement, new equipment, site preparation and related infrastructure improvements, together with all necessary appurtenances, related improvements and equipment and/or reimbursement of such costs, and costs of issuance (collectively, "Project"), including costs of issuance of the bonds, 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; and

WHEREAS, the Commission has heretofore approved and recommended the adoption of this form of ordinance by this County Council, has considered the issue of adverse competitive effect and has approved the forms of and has transmitted for approval by the County Council the Financing and Covenant Agreement between the County and the Company, the Bond Purchase

Agreement between the Issuer and the Company, as the purchaser of the Bonds, and the Trust Indenture (including the form of Bonds) between the Issuer and Old National Wealth Management;

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

Section 1. It is hereby found that: (i) the financing of the Project referred to in the Financing Agreement approved by the Commission and presented to this County Council; (ii) the issuance and sale of the County's Economic Development Revenue Bonds of 2020 (BHI Project) ("Bonds"); (iii) the sale of the Bonds to the Company for the construction of the Project and costs of issuance of the Bonds; (iv) the payment of the Bonds by Pledged TIF Revenues (as defined in the Trust Indenture); and (v) the securing of the Bonds under the Trust Indenture, complies with the purposes and provisions of IC 36-7-11.9 and -12 (collectively, "Act") and will be of benefit to the health and welfare of the County and its citizens. The proceeds of the Bonds will be used for financing all or a portion of the construction of the Project in, or physically connected to the Daleville Redevelopment Area located in or under the jurisdiction of the County and to pay costs of issuance of the Bonds. The County Council further finds, determines, ratifies and confirms that the promotion of economic development and the creation of job opportunities in and near the County is desirable to preserve the health, safety and general welfare of the citizens of the County and that it is in the public interest that the Commission and the County take such action as they lawfully may to encourage economic development, diversification of industry and promotion of job opportunities in and near the County. The County Council further finds and determines that: (i) the County Redevelopment Commission adopted its Amending Confirmatory Resolution on June 18, 2020, (ii) that such Amending

Confirmatory Resolution limited the life of the Daleville II Allocation Area ("Allocation Area") to the term of the Bonds; and (iii) the County Council hereby approves the issuance of the Bonds with the understanding that the Allocation Area will automatically sunset upon the retirement of the Bonds.

Section 2. The substantially final forms of the Financing and Covenant Agreement, the Trust Indenture and the Bond Purchase Agreement approved by the Commission are hereby approved (herein collectively referred to as the "Financing Documents," referred to in the Act), and the Financing Documents shall be incorporated herein by reference and shall be inserted in the minutes of the County 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 County may issue its Bonds, maturing no later than February 1, 2028, in the aggregate principal amount not to exceed \$2,200,000 which Bonds may be subject to mandatory sinking fund redemption with payments structured to maximize the amount of Bond proceeds raised from the projected Pledged TIF Revenues, taking into account reasonable coverage needed to market the Bonds. The Bonds are to be issued for the purpose of procuring funds to pay the cost of financing the Project, all as more particularly set out in the Financing Documents, which Bonds will be payable as to principal and interest by Pledged TIF Revenues pursuant to the Financing Documents or as otherwise provided in the Trust Indenture. The Bonds shall be issued in fully registered form in any integral multiple of \$5,000 or as provided in the Trust Indenture, payable semiannually on February 1 and August 1. The Bonds may be subject to optional redemption prior to maturity as further provided in the Trust Indenture. The Bonds may be issued as term bonds subject to mandatory sinking fund

redemption. Payments on the Bonds are payable in lawful money of the United States of America by check mailed or delivered to the registered owners or by wire transfer as provided in the Trust Indenture. The Bonds shall never constitute a general obligation of, an indebtedness of, or a charge against the general credit of the County nor are the Bonds payable in any manner from revenues raised by taxation, except for Pledged TIF Revenues, as described in the Trust Indenture.

Section 4. The Board of Commissioners and the Auditor are authorized and directed to sell the Bonds to the bond purchaser thereof at a price not less than the par value thereof. The Bonds shall bear no interest.

Section 5. The Bonds may be both purchased by the bond purchaser in installments and drawn down by the Company in installments.

Section 6. The Board of Commissioners and the Auditor are authorized and directed to execute, attest, affix or imprint by any means the County seal to the documents constituting the Financing Documents approved herein on behalf of the County and any other document which may be necessary or desirable to consummate the transaction, including the Bonds authorized herein. The Board of Commissioners and the Auditor are hereby expressly authorized to approve any modifications or additions to the documents constituting the Financing Documents which take place after the date of this ordinance with the review and advice of the counsel; it being the express understanding of this County Council that the terms of the Financing Documents are in substantially final form as of the date of this ordinance. The approval of said modifications or additions shall be conclusively evidenced by the execution and attestation thereof and the affixing of the seal thereto or the imprinting of the seal thereon; provided, however, that no such modification or addition shall change the maximum issuance

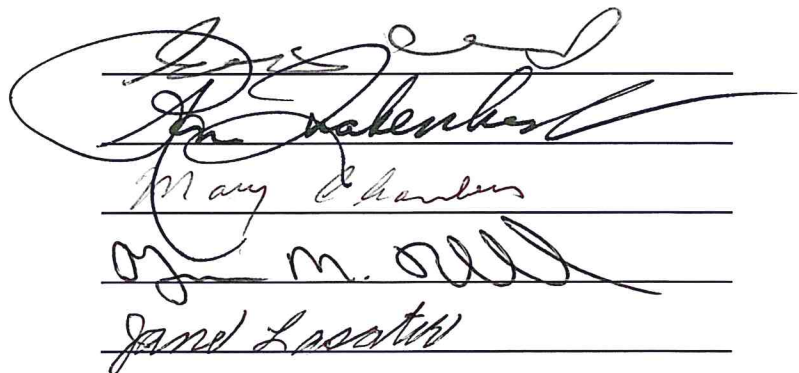
amount or maturity amount of, interest rate on or term of the Bonds as approved by the County Council by this ordinance without further consideration by the County Council. The signatures of the Board of Commissioners and the Auditor on the Bonds may be either manual or facsimile signatures. The Auditor is authorized to arrange for delivery of such Bonds to Old National Wealth Management as trustee ("Trustee"). Payment for the Bonds will be made to the Trustee, and after such payment the Bonds will be delivered by the Trustee to the purchaser thereof. The Bonds shall be originally dated as of the issue date.

Section 7. The provisions of this ordinance and the Trust Indenture securing the Bonds shall constitute a contract binding between the County and the holder of the Bonds, and after the issuance of the Bonds, this ordinance shall not be repealed or amended in any respect which would adversely affect the rights of such holders so long as the Bonds or the interest thereon remains unpaid.

Section 8. This ordinance shall be in full force and effect from and after its passage.

Passed and adopted by the County Council of Delaware County, Indiana this 23rd day of June, 2020.

COUNTY COUNCIL OF DELAWARE COUNTY,
INDIANA



Handwritten signatures of County Council members on lined paper. The signatures are: *David [unclear]*, *John [unclear]*, *May Chambers*, *My M. [unclear]*, and *Jane [unclear]*.

Jessie Ryan
Harry Stedall was absent

Attest:

ASG
Auditor