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**NOT AN OFFICIAL DOCUMENT**

Draft 2 - 10/25/21

**DEVELOPMENT AGREEMENT  
FOR REAL PROPERTY TAX ABATEMENT**

by and among

**THE CITY OF HOBART, INDIANA,**

**THE CITY OF HOBART BOARD OF  
PUBLIC WORKS AND SAFETY**

and

**2100 E 69TH AVENUE INDIANA LLC**

a Delaware limited liability company  
admitted to do business in Indiana

**November 3, 2021**

**GINA PIMENTEL  
RECORDER  
STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORD**

**2021-069071**

**3:10 PM 2021 Nov 29**

25 cc  
CHH 074019  
KHK  
**FILED**

**NOV 29 2021**

**JOHN E. PETALAS  
LAKE COUNTY AUDITOR**

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## DEVELOPMENT AGREEMENT

THIS AGREEMENT is made and entered into on the 3rd day of November, 2021 by and between 2100 E 69<sup>TH</sup> AVENUE INDIANA LLC, a Delaware Limited Liability Company admitted to do business in the State of Indiana with principal offices located at 2750 East 146<sup>th</sup> Street, Carmel, Indiana 46033 (the "Company"), the CITY OF HOBART, INDIANA, a municipal corporation organized and existing under the laws of the State of Indiana with principal offices at 414 Main Street, Hobart, Indiana 46342 (the "City"), and the BOARD OF PUBLIC WORKS AND SAFETY OF THE CITY OF HOBART, an instrumentality of the City, with offices at the same address ("Board"). The City and Board are collectively referred to as the "City Parties."

### Recitals

WHEREAS, the Company is in the business of real estate development for logistical, light industrial and commercial properties, and the Company, and one or more of its related entities, previously acquired significant real estate in the City of Hobart and established the NorthWind industrial park. 2100 E 69th Avenue Indiana LLC constructed one such project in NorthWind for a company involved in distribution and manufacturing; and

WHEREAS, the City is an Indiana municipality of approximately 30,000 persons, strategically situated in Lake County along I-65 near its junction with Interstate Highways 80, 90, 94 and several rail lines. The Board is an instrumentality of the City empowered to issue and approve City contracts and to supervise the City's Public Works and emergency services departments; and

WHEREAS, the Company expects to enter into an agreement to construct and lease an expansion of approximately 308,880 square feet of an existing industrial building consisting of approximately 280,800 square feet, for a total new square foot manufacturing plant consisting of approximately 589,680 square feet, has office facilities of pre-cast concrete construction, and has a 36 foot clearance on a portion of the subject property for 2100 E 69TH AVENUE, LLC, a Delaware limited liability company (the "Tenant"). The new facility occupies a site on 69<sup>th</sup> Avenue a short distance East of its intersection with Mississippi Street in the City, which Company plans to acquire or lease pursuant to a long-term ground lease, said site being legally described as:

### LOT 2

LOT 2 IN THE FINAL PLAT OF NORTHWIND CROSSINGS SOUTH REPLAT OF LOT 1, BEING A SUBDIVISION IN THE SOUTHWEST QUARTER OF SECTION 11, TOWNSHIP 35 NORTH, RANGE 8 WEST OF THE 2ND PRINCIPAL MERIDIAN, PER THE PLAT THEREOF RECORDED MAY 24, 2021 IN PLAT BOOK 114, PAGE 34, LAKE COUNTY, INDIANA.



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The above-described parcel is referred to in this Agreement as the "subject property" and occupies all or a portion of the land currently included in the following property number: 45-12-11-300-010.000-046 (The property number may change pending final plat approval by the City of Hobart Plan Commission). The new facility expansion is anticipated to be constructed in conformance to the Site Plan which is on file with and has been approved by the City Plan Commission;" and

WHEREAS, in connection with the construction of the expansion facility, the Company has applied to the City for the grant of a real estate tax abatement under I.C. §6-1.1-12.1-1, *et seq.*; and

WHEREAS, the City and the Company reached agreement upon the promises, terms and conditions upon which the City is to grant such abatement to the Company, which abatement is important to both the Company and Tenant in assuring the financial viability of the project and its subsequent profitability. The City will grant said real property abatement through the adoption by the Common Council of the City of Resolution Nos. 2021-14 and 2021-15, the latter adopted on November 3, 2021; and

WHEREAS, the Company, the City of Hobart and its Board of Public Works and Safety will have agreed upon and executed this Development Agreement ("DA") stating the covenants, terms and conditions under which the Company would receive the City's economic incentive through real property tax abatement, and the Company would deliver the promised benefits of the project, said DA being adopted and approved by action of the Common Council of the City through its Resolution No. 2021-16 on November 3, 2021 and by the Board of Public Works and Safety on the same date through the Board's Resolution Number 2021-07.

THEREFORE, IN CONSIDERATION of the mutual promises, terms and conditions hereinafter set forth and intending themselves to be legally bound, the parties agree as follows:

1. **Duties of the Company.** The Company agrees to undertake and perform the following duties:
  - a. Cause the construction of its proposed new expansion facility in Hobart, Indiana in substantial conformance to the written application, Statement of Benefits form with attachments thereto, plans and specifications submitted to and approved by the City. Changes agreed to between the Company and Tenant shall be subject to City Building Department approval only if required by City of Hobart Ordinances.
  - b. Comply with all applicable requirements of the City's Zoning Ordinance, particularly the site review process as applied to Planned Unit Developments for Manufacturing, Office Service or Planned Business Parks as required by Hobart Municipal Code (HMC) §154.296 (B) and the design guidelines

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appearing in HMC §154.308, the City's Building Codes, and the orders and actions of the City Plan Commission, Board of Zoning Appeals and Common Council;

c. Comply with the requirements of the City of Hobart Responsible Bidding Practices Ordinance, as amended, (HMC §§33.200 through 207) as to any contractor and subcontractor engaged by the Company, unless the application of such Ordinance is waived by the Common Council of the City;

d. Pay in full, when required, all City fees prescribed by ordinance in connection with the construction of its facility and the tax deduction and abatement process, including, but not limited to building permit fees, abatement application and exaction fees, financial impact and analysis fees and compliance review fee. The Company shall pay the exaction fee required by City Council Resolution No. 2008-16 in the amount of one percent of the total cost of the improvements (estimated to be \$220,000) to the City.

e. Make or cause to be made all filings of applications, Forms SB-1 and CF-1 when due under I.C. §6-1.1-12.1-1, *et seq.*, particularly I.C. §6-1.1-12.1-3, 3.5, 5, 5.6 and 5.3;

f. Pay or cause to be paid all property taxes levied upon the real property of the Company in connection with the facility when due subject only to Section 3 (d) below on tax appeals;

g. Within 30 days of the taking effect of this Agreement, sign and deliver to the City an affidavit pursuant to I.C. §22-5-1.7-11 that affirms that the Company has enrolled and is participating in the E-Verify program, provides documentation to the City that the Company is participating in the E-Verify program, and signs an affidavit affirming that the Company does not knowingly employ an unauthorized alien;

h. Refrain from any discrimination in employment on account of race, religion, gender, color, national origin, sexual orientation, disability or age under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act, and any other federal law, similar state law or local ordinance applicable to the Company's construction of the new facility;

i. Comply with all applicable laws of the City of Hobart, the State of Indiana and the United States in the construction of the subject property by the Company;

j. Record this fully-executed Agreement in the Office of the Lake County Recorder, Crown Point, Indiana at the Company's expense, and deliver copies of the recorded Agreement to the City Clerk-Treasurer and the City Department of Development. This Agreement shall take effect upon its execution and its recordation.

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k. Comply with all provisions of this Agreement.

2. **Duties of the City.** The City, the Board, their officials and employees agree to undertake and perform the following duties:

a. Approve the designation of the site of the new facility as an Economic Revitalization Area pursuant to I.C. §6-1.1-12.1-1, *et seq.*, for the purpose of qualifying the new facility for the grant of real property tax abatement. The parties agree that the abatement to be granted by the City will conform to the following terms. These tax years are based upon information provided by the Company. The Company agrees to notify the City in writing if construction completion is delayed or accelerated, which may affect the tax years in the following tables:

Real Property:

Estimated Cost:	\$ 22,000,000.00	
Estimated Assessed Value:	\$ 15,473,700.00	
Deduction Period:	Ten Years.	
Deduction Schedule:	Year One	100%
	Year Two	95%
	Year Three	80%
	Year Four	65%
	Year Five	50%
	Year Six	40%
	Year Seven	30%
	Year Eight	20%
	Year Nine	10%
	Year Ten	5%

The foregoing deduction schedule will be included in Section Six of Hobart City Council Resolution No. 2021-14 as per page 2 of the Baker-Tilly analysis dated September 23, 2021.

b. Provide assistance, advice, and guidance to the Company at its request concerning any of the matters discussed in this Agreement. Such guidance shall be provided to the Company at no cost unless the City's staff determines that it does not have the capability to respond to the Company's request and would be required to consult persons not employed by the City in assisting the Company whereupon the City will notify the Company in writing and will not engage any expert consultant to the City at the Company's expense without the Company's written authorization to do so. The Company shall pay the reasonable cost of the City's employee time in consulting with others.

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c. Provide all City services customarily provided by the City to businesses similar to the Company located in Ross Township including, but not limited to, police, fire prevention and suppression, storm water management, street and infrastructure management of City thoroughfares. The Company understands that:

(i) Wastewater collection, treatment and disposal is not the responsibility of the City of Hobart, but of the Merrillville Conservancy District, and that water service is the responsibility of Indiana American Water Company, a privately-owned public utility; and

(ii) The assessment of real property is the responsibility of the Ross Township Assessor and the application of the deduction to the Company's assessed value is the responsibility of the Lake County Auditor.

d. In reliance on the Company's representation below in Section 3(c) and the prior record of the company in compliance with the City's Responsible Bidding Practices Ordinance (HMC §§ 33.200-33.207), the Common Council will waive the application of that Ordinance for the construction of this facility.

**3. Additional Covenants and Representations of the Company.** In addition to the duties of the Company specified in Section 1 above, the Company agrees to adhere to and carry out the following commitments and representations:

a. Employment.

The Company represents that during the period of construction (which is now anticipated to commence November 2021 and conclude October 2022); construction of the new facility will result in the retention of approximately 100 full-time construction jobs, with a total cost of construction of \$22,000,000.00. Compliance with the above employment commitment shall be determined solely by the actual total construction cost at the conclusion of construction, irrespective of the actual number of retained jobs achieved.

b. Local Sub-Contractors.

The Company further represents and agrees that during the period of construction, any contractors or sub-contractors based in the City of Hobart, Indiana, with competitive bids shall be preferred for all work contracted by the Company for the new facility.

c. Union Labor.

The Company's contractor has represented that it will employ union labor in the construction of the new facility.

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d. Tax Payments and Appeals.

The Company shall pay, or cause to be paid, when due, all real property taxes assessed for the new facility. Property tax appeals shall be governed by the following requirements:

(i) *Real Estate Property Tax Appeals:* The Company agrees to refrain from filing or otherwise pursuing any real property tax appeal regarding the new facility for any year during the initial term of the lease between 2100 E 69th Avenue Indiana LLC and Tenant, and which would have the effect of reducing the minimum net real estate property taxes payable for the new facility for the years stated in the following table, and for the years thereafter during the pendency of said initial lease term which would have the effect of reducing the minimum net real estate property taxes in those years payable in the amount specified in said table, provided that, the assessed value of the real property improvements for the new facility reaches \$15,473,700. In the event that the assessed value of the real property of the new facility is less than \$15,473,700, the amount indicated in the table below for that year will be reduced by the percentage by which the actual valuation is less than \$15,473,700, so that the minimum net taxes to be paid under this no appeal agreement, is reduced proportionately. It is expected that the Company will annually pay real property taxes in an amount not less than those listed in the table below, and in the event that actual real property taxes due are less than the minimum amount listed in the table the difference between actual real property taxes due and the minimum real property tax amount will be payable to the City:

Taxes Payable Year	Minimum Property Taxes to be Paid on the Proposed Real Property Investment (per the September 23, 2021 Analysis by Baker Tilly Municipal Advisors LLC, attached as Exhibit "A")
2024	\$ 0
2025	19,530
2026	78,110
2027	136,700
2028	195,290
2029	234,340
2030	273,400
2031	312,460
2032	351,510
2033	371,040

Because changes in the assessed value of the proposed real property investment by the Assessor will impact the minimum property taxes to be paid as specified in the table above, it is necessary to recalculate the minimum property taxes to be paid in any year in which the actual assessed

value and tax rate figures on the proposed real property investment result in a material increase in that year's minimum tax amount. (This is addressed in the recalculation procedure provided in the following paragraph.) Changes in assessed valuation due to a property tax appeal, by contrast, do not impact the minimum net tax obligation appearing in the table, but can impose the requirement upon the City to refund the appealed taxes, thus potentially placing the City in a position in which the intended benefit to the City of the minimum taxes to be paid is either lost or significantly diminished. Accordingly, the provisions of this subsection prohibiting appeals during the years the abatements are in effect.

Annual Recalculation. On or before March 1 of each year during the effective period of the above-stated minimum net real estate property taxes payable table for the new facility, the City, acting through its financial advisors, will obtain the latest available applicable assessment and tax rate figures for the building on the subject property and calculate the actual figure for property taxes to be paid in that year. In the event that the difference between the figure calculated for that year and the figure stated in the above minimum net real estate taxes payable table results in an increase in the tax to be paid in the amount of \$500.00 or more, then the City will adjust the above schedule for that year and the subsequent years accordingly, and the Company shall be given written notice of the newly calculated amount and adjustment to the table, and shall pay at least that amount in that year, when due, and the adjusted amounts in all subsequent years in the deduction period, unless a recalculation done in any of those years results in subsequent changes to the table. The Company agrees to execute a Reimbursement Agreement under HMC §155.01, *et seq.* annually and to make the deposit required under that Agreement to cover the fee charged by the City's financial advisors to review compliance with the minimum tax payments required above.

(ii) Notice and Copy of Appeals and Related Documents: The Company represents and affirms that, at the time of its execution of this Agreement, there are no real property tax appeals currently pending or anticipated to be filed by the Company for any property owned within the City of Hobart by the Company now and during the next eighteen (18) months. With respect to any real property tax appeal to be filed by the Company for property located in the City within the fifteen (15) year period commencing with the taking effect of this Agreement, the Company agrees to provide to the City through its Mayor and Director of Development, fifteen (15) days in advance of filing any real property tax appeal, a written explanation as to why the appeal is being filed, along with complete copies of the appeal documents, including all schedules and exhibits.

(iii) Representations and Agreements Incorporated by Reference. The material representations and agreements made by the Company and

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contained in its Applications for Tax Abatement, forms SB-1, CF-1, and all exhibits and schedules attached thereto or referenced therein shall be deemed to be incorporated into this Agreement by reference and made an integral part hereof.

e. Other Representations of the Company. The Company hereby makes the following representations and warranties, and acknowledges and agrees that such representations and warranties have been material to the City Parties' decisions to enter into this Agreement, and further agrees that each representation and warranty shall be true, accurate and complete as of the execution of this Agreement:

(i) Owner a Limited Liability Company validly organized and existing under the laws of the State of Delaware and is admitted to do business as a foreign business organization in the State of Indiana;

(ii) All necessary action has been taken to authorize the Company's execution of this Agreement; the Company possesses the requisite power to enter into this Agreement and all other agreements contemplated hereby, and to perform its obligations hereunder; and this Agreement constitutes a legal, valid and binding obligation of the Company enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors rights heretofore or hereafter enacted and subject to the exercise of judicial discretion in accordance with general principles of equity;

(iii) Neither the execution and delivery by the Company of this Agreement, the consummation of the transactions contemplated herein, nor compliance with the provisions hereof violates, breaches, contravenes, conflicts with, or causes a default under any provision of the Articles of Organization or Operating Agreement of the Company or any provision of any existing note, bond, mortgage, debenture, indenture, trust, license, lease, instrument, decree, order, judgment or agreement to which the Company is a party or by which it or its assets may be bound or affected;

(iv) No litigation or proceeding in any court or before any other governmental authority or other person or entity is currently pending or, to the actual knowledge of the Company, threatened, which seeks to enjoin the Company from entering into this Agreement or any of the transactions contemplated hereby; and

(v) The Company is entering into this Agreement for the sole purpose of providing for the development of the new facility on the site described above subject to and in accordance with the terms and conditions of this Agreement.



(vi) The Company represents and agrees to use commercially reasonable efforts to construct the new building on time, subject only to delay caused by one of the following events outside of the Company's control, such as casualty, the need to renovate or reconstruct a portion of the building, destruction of all or a substantial portion of the building by the Act of God, change orders agreed upon by the Company and Tenant, the acts or omissions of Tenant, inclement weather, riot or civil insurrection, impossibility of obtaining adequate raw materials and supplies to support construction despite the Company's best efforts to obtain them, strikes or work stoppages, or epidemics or pandemics and any governmental orders, actions, shut-downs, mandates, restrictions or quarantines resulting from the same so that its anticipated completion date of October 2022 will be met.

In the event that the building is delayed such that the assessment of the building for real property tax purposes cannot be accomplished in time for tax payable year 2024, the City reserves the right to obtain an updated financial impact analysis from its financial advisors at Company expense and to establish a new amended table of real property taxes to be paid in Section 3 (d) (1) of this Agreement, the methodology for the determination of which shall be consistent with that which resulted in the table above. The City shall give written notice to the Company of the updated analysis and newly established table.

Notwithstanding the foregoing paragraph, in the event that the building is not completed, assessed and occupied by October 2022, the City may, upon its sole determination, terminate this Agreement and the property tax incentive granted herein in the manner provided by law.

4. **Return of Benefits.** Upon the occurrence of any one or more than one of the events stated below in Sub-Section (a), the Company, its successors by merger or acquisition, or its assigns, shall be responsible for reimbursing the City for the difference between the amount of real estate taxes for which the Company would otherwise have been liable if not for the real estate tax abatement granted in this Agreement during any year it was in effect during and prior to the event in sub-section (a) below occurring, and the actual real estate taxes paid by Company, or on its behalf (the "Abated Taxes"):

a. **Events Requiring Reimbursement and Repayment.** Within 90 days of the occurrence of any of the following events, the Company, its successors by merger or acquisition, or its assigns shall pay to the City, in full, the Abated Taxes, by check or wire transfer made payable to the City, and delivered to the Office of Clerk-Treasurer, 414 Main Street, Hobart, Indiana 46342, or such other governmental entity as the City may direct, in writing, provided that any of such events occur prior to the expiration of the period during which any abatement granted by the City pursuant to this Agreement is in effect.



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(i) The seizure, attachment or foreclosure of the new facility which results in its vacancy or abandonment for 12 consecutive months.

(ii) Failure of the Company, at the end of construction, to achieve ninety percent (90%) of the total cost of construction specified in Section 3(a).

b. Termination of Section 4. The effectiveness of the provisions of this Section 4 shall expire at the end of the abatement period granted under this Agreement.

## 5. Reporting Obligations during Construction.

a. Upon substantial completion of the Project, the Company agrees to report or cause to be reported to the City, the total number of local contractors or sub-contractors involved in the Project, and the total cost of construction expended by the Company. As used herein, the term "local" is defined to mean the City of Hobart, Indiana.

b. Not more than twice during construction of the Project, the Company, upon a written request from the City, will deliver to the City a written report which shall include the following information: (i) a general status report of the construction completed to date and (ii) an update on the project schedule. Upon the Project's completion, the Company will report the total monetary investment by the Company in the Project.

6. **Material Consideration.** The Company acknowledges and agrees that its agreements to perform and abide by the covenants and obligations set forth in this Agreement are material consideration for the commitments of the City Parties to perform and abide by their covenants and obligations contained in this Agreement.

7. **Mutual Assistance.** The Parties agree, subject to further proceedings required by law, to take such actions, including the execution and delivery of such reports, documents, instruments, petitions and certifications as may be necessary or appropriate in good faith, from time to time, to carry out the terms, provisions, and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions, and intent.

8. **Community Engagement.** The Company, as a Hobart business, acknowledges and agrees that it will in good faith fully engage with the community of Hobart, and support groups, organizations, initiatives and institutions that contribute to the improvement of the quality of life in Hobart and the betterment of the City. Such engagement and support may include, but is not limited to, financial contributions, volunteering of time, and/or participating in social, cultural, civic and religious events within the City. As a part of its annual filing of form CF-1, the Company shall include an overview outlining those actions the Company and its employees have undertaken to meet the Company's obligation under this section. Notwithstanding the foregoing, the

Company's failure to meet its community engagement obligations set forth in this section shall not constitute a default under this Agreement.

**9. Cooperation.** In the event of any administrative, legal or equitable action or other proceeding instituted by any person not a party to this Agreement challenging its validity or the validity of any provision thereof, the Parties shall cooperate in defending such action or proceeding to settlement or final judgment including all appeals. Each Party shall select its own legal counsel and retain such counsel at its own expense, and in no event shall the City Parties be required to bear the fees and costs of the Company's attorneys nor shall the Company be required to bear the fees and costs of the City Parties' attorneys. The Parties agree that this Section 8 shall constitute a separate agreement entered into concurrently with this Agreement, and that, if any other provision of this Agreement, or this Agreement as a whole is invalidated, rendered null, or set aside by a court of competent jurisdiction, the Parties agree to be bound by the terms of this Section 9, which shall survive such invalidation, nullification, or setting aside.

**10. Enforcement and Attorney Fees.** The provisions of this agreement may be enforced by either of the City Parties or the Company through any and all remedies available at law or in equity. In the event of any litigation or arbitration between or among the Parties regarding an alleged breach of this Agreement, the prevailing party will be entitled to recover its reasonable attorney fees and expenses of litigation.

**11. No Agency, Joint Venture or Partnership.** It is specifically understood and agreed to by and between the Parties that the Project is a private development. The City Parties and the Company hereby renounce the existence of any form of agency relationship, joint venture or partnership between them and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between the Parties.

**12. Conflict of Interest; Representatives of City Parties Not Individually Liable.** No member, official, or employee of the City Parties shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his personal interests or the interests of any corporation, partnership, or association in which he or she is, directly or indirectly, interested. No member, official, or employee of the City Parties shall be personally liable to the Company or to any successor in interest, in the event of any default or breach by the City Parties or for any amount which may become due to the Company or their successors or assigns, on any obligations under the terms of the Agreement. No member, employee or agent of the Company or the Company's successors shall be personally liable to the City Parties or to each other under this Agreement.

**13. Future Acts and Good Faith.** The Parties acknowledge and understand that (a) the Parties must take future actions to implement and maintain their respective obligations under this Agreement, and (b) certain of the representations, performance of the covenants, and agreements of the City Parties are subject to and contingent upon compliance with and completion of applicable statutory and administrative procedures,

Including, without limitation, any applicable public notice and public hearing requirements, official actions by governing bodies, and any remonstrance and appeal rights. Subject to compliance with and to the fullest extent permitted by applicable laws, each of the City Parties covenants that it shall diligently pursue and use its best efforts to do all things lawfully within its power, to take such future actions and to comply with all applicable statutory and administrative proceedings at such times and in such manner as to effectuate and implement the provisions and intent of this Agreement to the fullest extent possible in accordance with the time limits set forth herein, time being of the essence.

**14. Waiver of Jury Trial.** The parties acknowledge that disputes arising under this Agreement are likely to be complex and they desire to streamline and minimize the cost of resolving same. Each party irrevocably waives the right to trial by jury in any action, counterclaim, dispute or proceeding based upon, or related to the subject matter of this Agreement. This waiver applies to all claims against all parties to such actions and proceedings. This waiver is knowingly, intentionally and voluntarily made by all parties.

**15. Severability.** If any one or more than one of the covenants, terms or conditions of this Agreement should be determined by a court of competent jurisdiction to be unenforceable or contrary to law, such covenant, term or condition shall be null and void and shall be deemed separate from the remaining covenants and agreements herein contained and the remaining provisions of this Agreement shall be given effect to the extent practicable. Notwithstanding the foregoing, in the event any provision of this Agreement is determined to be invalid under any applicable law and therefore deemed void hereunder, and such voided provision prevents the Company or the City Parties from realizing the intended benefits of this Agreement, then the Company and the City Parties agree to modify this Agreement in a manner that allows each of the Parties to realize the originally intended benefits of this Agreement to the greatest extent possible. If the Agreement cannot be so modified or amended to allow the Parties to realize the originally intended benefits of this Agreement, then the Company and the City Parties shall have the right to terminate this Agreement and upon such termination all rights and obligations under this Agreement shall be extinguished, and the Parties agree to execute such releases or other evidence of the extinguishment of such obligations as may be necessary.

**16. No Other Agreement.** With the exception of any written side agreements between the Company and the City concerning the reimbursement of expenses incurred by the City Parties prior to the execution of this Agreement, and the Agreement for Development of Parcel dated on or about December 4, 2019, and as otherwise expressly provided herein, this agreement supersedes all other prior agreements, negotiations and discussions relative to the subject matter hereof and is a full integration of the agreement of the parties.

**17. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Any telecopied or digitally transmitted version of a manually executed original shall be deemed a manually executed original.

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**18. Notices and Demands.** A notice, demand, or other communication under this Agreement by any party to any other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and in the case of the Company, is addressed to or delivered personally to:

Company: 2100 E 69th Avenue Indiana LLC  
Mark Shapland, Executive Vice  
President - Chief Operating Officer  
120 East Burlington Avenue  
La Grange, Illinois 60525;

With a copy to: Joe Harrell, Controller  
2750 East 146<sup>th</sup> Street  
Suite 200  
Carmel, Indiana 46033

Patrick Harrington  
Harrington Law LLC  
201 West Springfield Avenue  
Suite 601  
Champaign, Illinois 61820

In the case of the City Parties or either of them addressed to or delivered personally to:

City: Mayor Brian K. Snedecor  
City of Hobart  
414 Main Street  
Hobart, IN 46342

With copies to: Beth Jacobson  
Director of Development,  
City of Hobart  
414 Main Street  
Hobart, IN 46342

Heather A. McCarthy  
City Attorney  
Hobart Department of Law  
705 East 4<sup>th</sup> Street  
Hobart, IN 46342

David W. Westland  
Westland & Bennett P.C.  
2929 Carlson Drive, Suite 300  
Hammond IN 46323

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*Draft 2 - 10/25/21*

or at such other address with respect to such Party as that Party may, from time to time, designate in writing and forward to the other parties as provided in this section.

**19. Governing Law.** This Agreement shall be construed and enforced under the laws of the State of Indiana. The Parties agree to submit to the exclusive jurisdiction and venue of the courts of the State of Indiana sitting in Lake County, Indiana and the U.S. District Court for the Northern District of Indiana, Hammond Division.

**20. Authority.** The undersigned persons executing and delivering this Agreement on behalf of each of the Parties represent and certify that they are the duly authorized officers of such Party and have been fully empowered to execute and deliver this Agreement on behalf of such Party and that all necessary actions to execute and deliver this Agreement have been taken by such Party.

**21. No Third-Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon any person, firm, or corporation other than the parties hereto and their respective successors or assigns, any remedy or claim under or by reason of this Agreement or any term, covenant, or condition hereof, as third-party beneficiaries or otherwise, and all of the terms, covenants, and conditions hereof shall be for the sole and exclusive benefit of the Parties.

**22. Assignment.** Upon written consent of the City Parties, the Company may assign its rights and obligations under this Agreement to another party capable of performing all covenants and terms of this Agreement binding upon the Company. Such consent shall not, in such case, be unreasonably withheld, conditioned or delayed.

**23. Amendments.** This Agreement may be amended from time to time, in whole or in part, only by a written agreement executed by the parties and adopted in like manner as this Agreement.

**24. Default.** Any material failure by any Party to perform any term or provision of this Agreement, which failure continues uncured for a period of thirty (30) days following written notice of such failure provided to the defaulting party from another Party, unless such period is extended by written mutual consent (but any extension is at the non-defaulting Party's sole discretion), shall constitute a default under this Agreement ("Default"). Any notice given pursuant to the preceding sentence shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure satisfactorily may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such thirty-day period (provided economic considerations may not be a factor in such delay), then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such applicable period. Upon the occurrence of a Default, a non-defaulting Party may institute legal proceedings at law or in equity (including any action to compel specific performance) to enforce the observance and performance of any covenant, condition, obligation, or agreement of the defaulting party under this Agreement; provided, that, in no event shall any Party have the right to terminate this

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Agreement. If the Default is cured, then no Default shall exist and the noticing Party shall take no further action.

**25. Land Acquisition Contingency.** The Parties hereto acknowledge that Company has not yet acquired the subject property, and accordingly agree that notwithstanding anything contained herein to the contrary, it shall be a condition precedent to the enforceability of the terms and conditions of this Agreement that Company shall have acquired the subject property, whether in fee simple, or by a long term ground lease with an option to purchase, on or before March 1, 2022. In the event that for any reason, or no reason, Company does not acquire the subject property on or before such date, then this Agreement, and all its terms and conditions shall automatically terminate, be of no further force or effect, and neither Party shall have any further right, liability, or obligation hereunder. Upon Company's acquisition of the subject property prior to the date herein, the condition precedent set forth under this Section 25 shall be deemed satisfied and the Agreement shall continue in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

*[signature pages follow this page]*

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2100 E 69TH AVENUE INDIANA LLC  
a Delaware limited liability company ("Company")

By: 

Shannen Jensen  
Senior Vice President,  
Associate General Counsel,  
Assistant Secretary

CITY OF HOBART, INDIANA ("City")  
an Indiana Municipal Corporation

By: 

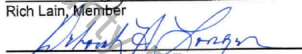
Brian K. Snedecor, Mayor

ADOPTED and APPROVED by the Board of Public Works and Safety of the City of Hobart on this 17<sup>th</sup> day of November, 2021.

CITY OF HOBART BOARD OF PUBLIC  
WORKS AND SAFETY ("Board"):

  
Brian K. Snedecor, Presiding Officer

  
Rich Lain, Member

  
Deborah A. Longer, Clerk-Treasurer

ATTEST: 

Assistant Clerk-Treasurer

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STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

See Attached Certificate

BEFORE ME, a duly appointed Notary Public in and for said county and state, appeared, \_\_\_\_\_ of 2100 E 69th Avenue Indiana LLC, a party to the above instrument and a person known to me, who acknowledged execution of same in such capacity, as his free and voluntary act, for the uses and purposes stated therein.

IN WITNESS WHEREOF, I have affixed my signature and official seal on this day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Notary Public

Name Printed: \_\_\_\_\_

County of Residence: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

STATE OF INDIANA )  
 ) ss:  
COUNTY OF LAKE )

BEFORE ME, a duly appointed Notary Public in and for said county and state, appeared BRIAN K. SNEDECOR and PATRICIA WHITE, Mayor-Presiding Officer of the City of Hobart Board of Public Works and Safety and Assistant Clerk-Treasurer of the City of Hobart, Indiana, respectively, signatories to the above instrument and persons known to me, who acknowledged execution of same in such capacities on behalf of said City, as their free and voluntary acts, for the uses and purposes stated therein.

IN WITNESS WHEREOF, I have affixed my signature and official seal on this 19th day of NOVEMBER, 2021.

Karen E. Anderson  
Notary Public

Name Printed: KAREN E. ANDERSON

County of Residence: LAKE

My Commission Expires: 02/25/2023





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## ACKNOWLEDGMENT

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

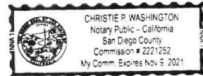
COUNTY OF SAN DIEGO

On November 3, 2021 before me, Christie P. Washington, Notary Public, personally appeared Shannon Jensen, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Christie P. Washington  
Signature of Notary Public



(Notary Seal)

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STATE OF INDIANA     )  
                                  ) ss:  
COUNTY OF LAKE     )

BEFORE ME, a duly appointed Notary Public in and for said county and state, appeared DEBORAH A. LONGER and RICH LAIN, Members of the Board of Public Works and Safety of the City of Hobart, Indiana, signatories to the above instrument and persons known to me, who acknowledged execution of same in such capacities on behalf of said Board, as their free and voluntary acts, for the uses and purposes stated therein.

19th IN WITNESS WHEREOF, I have affixed my signature and official seal on this day of NOVEMBER, 2021.

Karen E. Anderson  
\_\_\_\_\_  
Notary Public

Name Printed: KAREN E. ANDERSON

County of Residence: LAKE

My Commission Expires: 02/25/2023



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

This instrument prepared by: David W. Westland, Esq., Westland & Bennett P.C.  
2929 Carlson Drive, Suite 300, Hammond, IN 46323  
Ph. 219.440.7550; Email: [dwestland@westlandbennett.com](mailto:dwestland@westlandbennett.com)