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TO: REC. FILED: 25-00
BY: JAS
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RECORDED AS PRESENTED

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD
GINA PIMENTEL
RECORDER

FILED

Nov 22 2024 BDD
PEGGY HOLINGA-KATONA
LAKE COUNTY AUDITOR

RIGHT OF FIRST REFUSAL AGREEMENT

This Right of First Refusal Agreement ("Agreement") is made and entered into on November 15, 2024 ("Effective Date"), by and between **Schwer Properties LLC** ("**Schwer**"), and **Beamair Inc.** ("**Beamair**"), each a "party" and together the "parties", in consideration of the mutual promises, covenants and conditions of that certain **PURCHASE AND SALE AGREEMENT** made and entered into on October 22, 2024, by and between Beamair, as Seller, and Schwer, as Buyer ("**PSA**").

1. **Real Property.** Following the Closing (as such term is defined the PSA), Schwer will be the fee simple owner of the commercial real property described on **Exhibit A** attached hereto ("**Schwer Parcel**"); and, Beamair shall retain fee simple ownership of the property adjoining the Schwer Parcel described on **Exhibit B** attached hereto ("**Beamair Parcel**").

2. **Grant of Right of First Refusal.** Subject to the terms, provisions and conditions set forth herein, following the Closing, Schwer hereby grants to Beamair the exclusive right of first refusal to purchase all or any portion of the Schwer Parcel, and Beamair hereby grants to Schwer the exclusive right of first refusal to purchase all or any portion of the Beamair Parcel.

3. **Applicable Transactions; Offer, Notice and Acceptance.** If at any time Beamair or Schwer makes or receives a bona fide, arm's length, written offer to or from a third party to sell or purchase all or a portion of the Beamair Parcel or Schwer Parcel (or a majority interest in the entity comprising Beamair or Schwer), as applicable, which offer Beamair or Schwer intends to accept ("**Offer**"), then within ten (10) days thereafter such party shall send the other party a copy of the Offer along with a notice of its intention to accept the same ("**Notice**").

The recipient of the Offer and Notice shall have the right within thirty (30) days after its receipt of such Offer or Notice to agree to purchase the parcel described therein on the same terms and conditions as specified in said Offer. In the event the recipient of the Offer and Notice so elects to purchase such property (or such interest in the entity comprising the offering party), the closing of the sale shall take place at the time and on the same terms and conditions as are set forth in the Offer. In the event the applicable party does not elect to purchase the parcel (or such interest in the entity comprising the offering party) within said thirty (30) day period, or if after giving notice of its intention to buy the applicable parcel, it fails to complete such purchase on the precise terms set forth in the Offer, then the offering party shall be free for a period of one hundred eighty (180) days from the last day of said period of thirty (30) day period, to sell the parcel at a price not less than that specified in the Offer and on the terms and conditions set forth in the Offer. Upon the expiration of the said one hundred eighty (180) days, the offering party shall again be bound by the

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terms of this Agreement. Additionally, in the event of the recipient of the Offer and Notice does not elect to purchase the property (or such interest in the entity comprising the offering party), and the offering party fails to consummate any such sale, then Schwer or Beamair, as applicable shall have all of the rights granted under this Section 3 with respect to any subsequent bona fide offers to or from third parties to purchase the respective property (or an interest in the entity comprising either Schwer or Beamair).

4. **Excluded Transactions.** Notwithstanding any other provision of this Agreement, Schwer and Beamair shall not have the right of first refusal to purchase the Schwer or Beamair Parcel, as applicable, in any of the following transactions:

- (a) encumbrances of the Schwer Parcel or Beamair Parcel;
- (b) sales of the Schwer Parcel or Beamair Parcel to any entity which controls, is controlled by or is under common control with Schwer or Beamair, or to any corporation resulting from the merger of or consolidation with Schwer or Beamair;
- (c) the sale of any membership interests in Schwer or Beamair; or
- (d) sales of (i) the Schwer Parcel to any third party which third party (or another entity which is affiliated with or controls, is controlled by or is under common control with such third party) also contemporaneously purchases one or more of the businesses then operating on the Schwer Parcel or (ii) the Beamair Parcel to any third party which third party (or another entity which is affiliated with or controls, is controlled by or is under common control with such third party) also contemporaneously purchases one or more of the businesses then operating on the Beamair Parcel.

5. **Notices.**

- (a) **Form and Manner of Notices.** Unless otherwise expressly stated in this Agreement, notices, elections, requests and other communication hereunder shall be in writing and shall be deemed given (i) when personally delivered or delivered by reputable overnight courier service; or (ii) on the date sent by email when sent by email before 5:00 p.m. City of Hammond, Indiana, time, on a Business Day (as Business Day is defined in Section 9 of this Agreement). Notices shall be addressed to the addresses provided next to each party's signature below.
- (b) **Notification of Change of Address.** If a party wishes to change a party's address, then the party may do so by providing written notice to the other party in the manner stated above in Section 5(a).

6. **Assignment.** This Agreement shall be binding upon and shall inure to the benefit of the parties respective successors and assigns. Neither party shall assign their rights under this Agreement without the prior express written consent of the other party, which consent may be withheld in such party's sole discretion. Any assignment without the prior express written consent of the other party shall automatically terminate this Agreement and any rights of first refusal granted hereunder.

7. **Headings and Captions.** The headings and/or captions of the sections, subsections, paragraphs, and other provisions of this Agreement are for convenience of reference only, and shall in no way be deemed to limit, define or restrict the substantive provisions of this Agreement.

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8. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties with respect to the matters contained herein, and supersedes any prior or contemporaneous agreement with respect thereto. No amendment or modification of this Agreement shall be binding upon the parties unless made in writing and signed by both parties.

9. **Time and Days.** Time is of the essence with respect to the performance of all the terms, conditions and covenants of this Agreement. In computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included, and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or a U.S. National Holiday observed by a U.S. federally chartered and regulated bank, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or U.S. National Holiday observed by a U.S. federally chartered and regulated bank. Unless otherwise specifically stated in this Agreement, time periods specified in this Agreement are calendar days and shall expire at midnight of the date stated. For purposes of this Agreement, a "Business Day" is Monday, Tuesday, Wednesday, Thursday, and Friday, unless a U.S. National Holiday observed by a U.S. federally chartered and regulated bank falls on one or more of those days.

10. **Governing Laws.** This Agreement and the rights of the parties hereunder shall be governed by and construed in accordance with the laws and customs of the State of Indiana.

11. **Counterparts.** This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute but one and the same instrument. This Agreement and any amendments must be executed and notarized and in recordable form.

12. **Exercise of Rights.** Except as otherwise expressly provided herein, all rights, powers, and privileges conferred hereunder upon the parties hereto shall be cumulative and in addition to those other rights, powers, and remedies hereunder and those available at law or in equity. All such rights, powers, and remedies may be exercised separately or at once, and no exercise of any right, power, or remedy shall be construed to be an election of remedies or shall preclude the future exercise of any or all other rights, powers, and remedies granted hereunder or available at law or in equity, except as expressly provided herein. If any action is instituted between the parties in connection with the enforcement of this Agreement or any provision hereof, the party prevailing in such action shall be entitled to recover from the other party all of the prevailing party's reasonable costs in bringing such action, including, but without limitation, reasonable attorney fees.

13. **Severability.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, and if such provision is not essential to the effectuation of the basic purposes of this Agreement, such provision shall be fully severable, this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never been a part of this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect.

14. **No Waiver.** The waiver by either party of the performance of any covenant, condition or promise shall not invalidate this Agreement, nor shall it be construed as a waiver of any other covenant, condition or promise herein.

15. **Recording of Agreement or Memorandum.** This Agreement, whether it be the original or a copy, may be recorded. Alternatively, a memorandum of this Agreement executed by both parties and properly notarized, may be recorded.

16. **Effective Date.** The "Effective Date" of this Agreement that is inserted into the preamble on

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page 1 of this Agreement is the date that this Agreement is executed by both Schwer and Beamair.

[signature page follows next]

Property of Lake County Recorder

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IN WITNESS WHEREOF, Schwer and Beamair have executed this Right of First Refusal Agreement on the day and year first written above.

Addresses for Notices
to Schwer Properties LLC:

Schwer Properties LLC
Attn: Tom Schwer
5028 Columbia Ave.
Hammond, IN 46327
Email: tschwer@rubicon85.com

Schwer Properties LLC

By: 
Thomas J. Schwer, Manager

Addresses for Notices
to Beamair Inc.:

Beamair Inc.
Attn: W. Brian Beatty
940 150th St.
Hammond, IN 46327
Email: bbeatty@bemcor.com

Beamair Inc.

By: 
W. Brian Beatty, President

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If recorded, after recording return to: Beamair Inc.
Attn: W. Brian Beatty
940 150th St.
Hammond, IN 46327

The mailing address of Schwer Properties LLC is the following street address: 5028 Columbia Ave.
Hammond, IN 46327

The mailing address of Beamair Inc. is the following street address: 940 150th St.
Hammond, IN 46327

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. Chris Fox

This instrument was prepared by Chris Fox, Attorney at Law, Indiana License #19091-64; Address: 516 East 86th Avenue, Merrillville, IN 46410-6213 (Phone: 219/791-1520; Fax: 219/791-9366); referencing Greater Indiana Title Company commitment no. IN015693.

(Right of First Refusal Agreement – Page 6 of 6)

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EXHIBIT A

Schwer Parcel

All that part of the Northwest quarter of Section 31, Township 37 North, Range 9 West of the Second Principal Meridian lying West of the West 30-foot right of the way line of Columbia Avenue and lying South of the South 30-foot right of way line of 150th Street in the City Hammond, North Township, Lake County, Indiana, and more particularly described as commencing at a point that is 1096.2 feet South and 30 feet West of the Northeast corner of said Northwest quarter of Section 31, the same being a point in the West 30-foot right of way line of Columbia Avenue and being 406.20 feet South of the South 30-foot right of way line of 150th Street; thence South on said West line of Columbia Avenue 191.70 feet to the North right of way line of the Elgin, Joliet and Eastern Railroad; thence West on the North line of the Elgin, Joliet and Eastern Railroad right of way for a distance of 970.94 feet; thence North 597.0 feet to the South line of said 150th Street; thence East on said 150th Street South line 522.14 feet to a point, said point being 449.50 feet West of the Southwest corner of 150th Street and Columbia Avenue; thence South at right angles 270.10 feet; thence Southeasterly on a line that makes an exterior angle of 127 degrees 04 minutes 30 seconds measured North thru East to Southeast with aforesaid 270.10-foot line for a distance of 63.0 feet; thence Southeasterly on a line that makes an exterior angle of 167 degrees 40 minutes measured Northwest thru North to Southeast with aforesaid 63.0-foot line for a distance of 232.40 feet; thence East on a line that makes an exterior angle of 155 degrees 27 minutes measured Northwest thru North to East with aforesaid 232.40-foot line for a distance of 183.40 feet to a point in the West 30-foot right of way line of Columbia Avenue and the point of commencement and containing 9.317 acres;

EXCEPTING THEREFROM the following described real estate:

All that part of the Government Lot 3 in the Northwest Quarter of Section 31, Township 37 North, Range 9 West of the Second Principal Meridian, City of Hammond, Lake County, Indiana, written and prepared by John Stuart Allen an Indiana Professional Surveyor, number 29900011 with Torrenga Surveying, LLC and originally depicted an original Boundary Survey dated August 29, 2024 and having a job number of 2024-0294 more particularly described as follows: commencing at the Northeast corner of Lot 10 in Stafford and Trankle's 6th Addition to the City of Hammond, Lake County, Indiana, as per plat thereof recorded in Plat Book 6, Page 32 in the Office of the Recorder, Lake County, Indiana said Point of Commencement being on the West line of Government Lot 3; thence North 89 degrees 59 minutes 29 seconds into said Government Lot 3 and along the South Right of Way of 150th Street (30 feet South of the centerline of 150th Street), a distance of 321.87 feet to the Point of Beginning; thence North 89 degrees 59 minutes 29 seconds East along the said South Right of Way line, a distance of 520.86 feet to the Northwest corner of a parcel of land described in a deed dated February 16, 2024 and recorded February 27, 2024 as Document Number 2024-007095 in the Office of the Recorder, Lake County, Indiana; thence South 00 degrees 00 minutes 31 seconds East at right angles from the last described line and along the West line of said Document Number 2024-007095, a distance of 172.10 feet; thence South 89 degrees 59 minutes 29 seconds West, a distance of 427.78 feet; thence South 00 degrees 00 minutes 31 seconds East, a distance of 154.97 feet; thence South 44 degrees 59 minutes 29 seconds West, a distance of 101.34 feet; thence South 00 degrees 00 minutes 31 seconds East, a distance of 82.53 feet; thence North 89 degrees 59 minutes 29 seconds East, a distance of 92.25 feet; thence South 00 degrees 00 minutes 31 seconds East, a distance of 116.92 feet to a point on the North Right of Way line of former Elgin, Joliet, and Eastern Railroad; thence South 89 degrees 59 minutes 17 seconds West along the said North Right of Way line, a distance of 124.54 feet to a point 322.55 feet East of the West line of said Government Lot 3; thence North 00 degrees 59 minutes 21 seconds East, a distance of 598.27 feet to the Point of Beginning, containing 126,537 square feet, 2.905 acres more or less.

SPLIT FROM Tax Parcel Number: 45-03-31-130-002.000-023

Commonly known as: 5032 Columbia Ave.
Hammond, IN 46327

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EXHIBIT B

Beamair Parcel

Parcel 1:

Part of Government Lot 3, in Section 31, Township 37 North, Range 9 West of the Second Principal Meridian, described as beginning at a point in the West line of said Lot 3, in Section 31 where the same intersects the centerline of 150th Street in the City of Hammond; thence South along said West line of Government Lot 3, a distance of 627 feet to the North right-of-way line of the Elgin, Joliet and Eastern Railroad; thence Easterly along said Northerly right-of-way 322.55 feet to gas pipe corner; thence North parallel to the East line of said Lot 3, a distance of 627 feet to the center of 150th Street; thence West 321.84 feet to the point of beginning, in the City of Hammond, Lake County, Indiana.

Tax Parcel Number: 45-03-31-130-001.000-023

Commonly known as: 940 150th St.
Hammond, IN 46327

Parcel 2:

All that part of the Government Lot 3 in the Northwest Quarter of Section 31, Township 37 North, Range 9 West of the Second Principal Meridian, City of Hammond, Lake County, Indiana, written and prepared by John Stuart Allen an Indiana Professional Surveyor, number 29900011 with Torrenga Surveying, LLC and originally depicted an original Boundary Survey dated August 29, 2024 and having a job number of 2024-0294 more particularly described as follows: commencing at the Northeast corner of Lot 10 in Stafford and Trankle's 6th Addition to the City of Hammond, Lake County, Indiana, as per plat thereof recorded in Plat Book 6, Page 32 in the Office of the Recorder, Lake County, Indiana said Point of Commencement being on the West line of Government Lot 3; thence North 89 degrees 59 minutes 29 seconds into said Government Lot 3 and along the South Right of Way of 150th Street (30 feet South of the centerline of 150th Street), a distance of 321.87 feet to the Point of Beginning; thence North 89 degrees 59 minutes 29 seconds East along the said South Right of Way line, a distance of 520.86 feet to the Northwest corner of a parcel of land described in a deed dated February 16, 2024 and recorded February 27, 2024 as Document Number 2024-007095 in the Office of the Recorder, Lake County, Indiana; thence South 00 degrees 00 minutes 31 seconds East at right angles from the last described line and along the West line of said Document Number 2024-007095, a distance of 172.10 feet; thence South 89 degrees 59 minutes 29 seconds West, a distance of 427.78 feet; thence South 00 degrees 00 minutes 31 seconds East, a distance of 154.97 feet; thence South 44 degrees 59 minutes 29 seconds West, a distance of 101.34 feet; thence South 00 degrees 00 minutes 31 seconds East, a distance of 82.53 feet; thence North 89 degrees 59 minutes 29 seconds East, a distance of 92.25 feet; thence South 00 degrees 00 minutes 31 seconds East, a distance of 116.92 feet to a point on the North Right of Way line of former Elgin, Joliet, and Eastern Railroad; thence South 89 degrees 59 minutes 17 seconds West along the said North Right of Way line, a distance of 124.54 feet to a point 322.55 feet East of the West line of said Government Lot 3; thence North 00 degrees 59 minutes 21 seconds East, a distance of 598.27 feet to the Point of Beginning, containing 126,537 square feet, 2.905 acres more or less.

SPLIT FROM Tax Parcel Number: 45-03-31-130-002.000-023

location: East of and adjacent to 940 150th St.
Hammond, IN 46327

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