

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

RESOLUTION NO. 2021-08

**A Resolution to Approve and Authorize the Execution of a
Development Agreement between the City of Hobart and
2100 E. 69th Avenue, LLC for Personal Property Tax Abatement**

WHEREAS, the Common Council ("Council") of the City of Hobart, Indiana ("City") adopted Resolution No. 2021-17 on October 13, 2021 declaring that the area commonly known as 2400 East 69th Avenue, Merrillville, Lake County, Indiana 46410, as more particularly described in Exhibit "A" attached to said Resolution, is an Economic Revitalization Area for the purpose of encouraging development and occupancy therein by providing personal property tax abatement in accordance with I.C. §6-1.1-12.1, *et seq.*; and

WHEREAS, said Resolution was adopted pursuant to the application of 2100 E. 69TH AVENUE, LLC ("2100 East") for the installation of manufacturing equipment, and the Council will likely adopt its Resolution No. 2021-18 later on November 3, 2021 after public hearing duly noticed in the manner required by law, confirming such designation and abatement; and

WHEREAS, pursuant to said Confirmatory Resolution of the Council, the City of Hobart and 2100 East have negotiated and preliminarily approved a Development Agreement governing the covenants, terms and conditions under which the project will be constructed, and

WHEREAS, the Board of Public Works and Safety ("Board") of the City is a party to the Agreement which is attached to this Resolution, and the Board also acts as the City's contracting entity pursuant to law; and

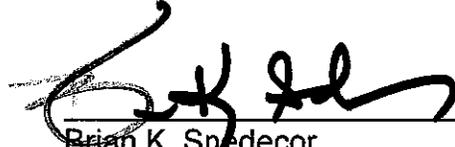
WHEREAS, the Board now desires, contingent upon the Council's approval of its Confirmatory Resolution No. 2021-18 to approve and adopt said Agreement and to authorize its execution for itself and the City.

NOW, THEREFORE, BE IT RESOLVED by the Board of Public Works and Safety of the City of Hobart as follows:

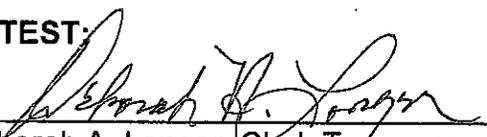
1. The Development Agreement by and between the City and 2100 E. 69th Avenue, LLC, a Delaware limited liability company, which is attached hereto, is hereby approved and adopted.
2. The Mayor of the City and the City Clerk-Treasurer or Assistant Clerk-Treasurer, upon adoption by the Common Council of the

above-referenced Confirmatory Resolution, are authorized to execute and to attest to the execution of the Agreement, respectively.

ALL OF WHICH IS ADOPTED on this 30th day of November, 2021 by the BOARD OF PUBLIC WORKS AND SAFETY of the City of Hobart, Indiana.



Brian K. Snedecor
Presiding Officer

ATTEST:


Deborah A. Longer, Clerk-Treasurer of
_____, ~~Assistant Clerk-Treasurer~~

Exhibit "A"

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.

**DEVELOPMENT AGREEMENT
FOR PERSONAL 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, LLC

a Delaware limited liability company admitted
as a foreign business organization in Indiana

November 3, 2021

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DEVELOPMENT AGREEMENT

THIS AGREEMENT is made and entered into on the 3rd day of November, 2021 by and among 2100 E. 69th AVENUE, LLC, a Delaware limited liability company, admitted as a foreign business entity in the State of Indiana, with principal offices located at 334 North Senate Avenue, Indianapolis, IN 46204 (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 a manufacturer of electrical products for use in the non-residential construction industry; and

WHEREAS, the Company is currently seeking a financial incentive from the City in the form of personal property tax abatement to enable it to establish a new manufacturing and office facility to be constructed and leased to the Company long-term (15 years) in the City of Hobart. The equipment to be subject to the tax abatement includes manufacturing equipment; and

WHEREAS, said equipment will be located inside the Company's new facility at 2400 East 69th Avenue in the City. The acquisition cost of the equipment is estimated at \$34,979,000 and its estimated assessed valuation is \$10,493,700 (following depreciation of the new equipment to the 30% assessed valuation floor). The equipment is newly acquired. Equipment otherwise qualifying for abatement but transferred to Hobart from another Indiana location is not eligible for property tax abatement pursuant to I.C. §6-1.1-12.1-1 (3) (D)-(12)-(E) ; - (13) (D) and - (14) (D); 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, U.S. Highway 30 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 City and the Company have reached agreement upon the promises, terms, and conditions upon which the City will grant such personal property tax abatement to the Company, which abatement is important to the Company in assuring the financial viability of the equipment acquisition and its subsequent profitability, and the parties now wish to document their agreements in this instrument;

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, for itself and for its officers, directors and employees, agrees to undertake and perform the following duties:

a. Timely complete the purchase, or acquisition or transfer and installation of the equipment at the Company's new manufacturing facility in Hobart, Indiana as specified on the exhibit which is attached hereto and made a part hereof as Exhibit "A." The items of equipment described in said exhibit qualify for abatement and are referred to herein as the "Equipment." It is the Company's responsibility to contact the Assessor to determine if the Equipment listed in Exhibit "A" is eligible for abatement.

b. Acquire, transfer and install the Equipment in substantial and material conformance with the written application, Statements of Benefit forms, and representations submitted to and approved by the City;

c. Comply with all applicable requirements of the City's Municipal Code and all other applicable building codes in the installation and operation of the Equipment;

d. Pay in full, when required, all City fees prescribed by ordinance or resolution in connection with the installation of the Equipment, and the tax deduction and abatement process, including, but not limited to building permit fees, abatement application fees, exaction fee, financial impact and analysis fees, compliance review fee and monitoring fee. The Company shall pay the exaction fee required by City Council Resolution No. 2008-16 in the amount of one percent of the estimated cost of the Equipment (\$349,790) on or before the date of final approval by the Common Council of the personal property abatement provided for herein.

e. Make 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 all property taxes levied upon the personal property of the Company in connection with the facility when due subject only to Section 3 (b) below on property tax appeals. The Company shall pay in full, when due, the amount of any personal property taxes resulting from partial or interim assessments for tax years prior to the commencement of the effective period of the personal property abatement on the Equipment as specified in Section 2 (a) below;

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, 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 operations at the new facility;

i. Comply with all applicable laws of the City of Hobart, the State of Indiana and the United States in the operation and maintenance of the New Equipment;

j. Comply with all provisions of this Agreement.

This Agreement, when executed by all parties, shall be recorded by the City in the Office of the Recorder of Lake County, Indiana. The Company agrees to reimburse the City for the recordation fee. The Agreement shall take effect upon recording.

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

a. Approve or reaffirm the designation of the site for location of the Equipment as an Economic Revitalization Area pursuant to I.C. §6-1.1-12.1-1, *et seq.*, for the purpose of qualifying the Equipment for the grant of personal 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 tax abatement period will commence on January 1 of the year the first-scheduled items of Equipment are fully assessed for taxes payable the following year. The Company expects substantially all of the Equipment to be fully installed and assessed for 2023 taxes payable in 2024. The Company agrees to notify the City in writing if installation completion is delayed or accelerated, which may affect the tax years in the following table:

Total Estimated Net Assessed Value of Equipment to be Installed (30% of estimated acquisition cost) Qualifying for Abatement: \$10,493,700.

Deduction Period: Ten Years.

Deduction Schedule:	Year One	100%
	Year Two	90%
	Year Three	80%
	Year Four	70%
	Year Five	60%
	Year Six	50%
	Year Seven	40%
	Year Eight	30%
	Year Nine	20%
	Year Ten	10%

The foregoing deduction schedule will be included in Section Six of Hobart City Council Resolution No. 2021-17 as per page 3 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 is required to consult persons not employed by the City in assisting the Company. The Company will pay the reasonable cost of the City's employee's time in consulting with others.

c. All necessary action has been or will be taken to authorize the City's execution of this Agreement and the performance of the City's obligations hereunder, the City has the power and authority under all federal, state and local law to enter into this Agreement and perform its obligations hereunder, and this Agreement constitutes a legal, valid and binding obligation enforceable against the City according to its terms;

d. Neither the execution and delivery by the City 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 any statute or regulation of the State of Indiana or the United States governing the City, or any provision of any existing contract, bond, indenture, license, lease, instrument, decree, order or judgment to which the Company is a party or by which it may be bound or affected;

e. The City will cooperate reasonably with Company's effort to obtain any applicable permits, reviews, licenses, actions, consents, and approvals which may be necessary for the installation and commissioning of the Equipment;

f. The City has no legal responsibility to assess equipment and other personal property for taxation, and plays no role in the determination of the eligibility of equipment for property tax abatement under the laws of the State of Indiana. These matters are within the responsibility of the Office of the Ross Township Assessor and the Lake County Assessor. Accordingly, the City parties specifically disclaim any responsibility and liability for any error or omission in the determination of the eligibility of equipment for abatement, and the determination of the final amount of any personal property taxes due or to become due.

g. There is no action, suit, proceeding, or investigation, at law or in equity or by or before any United States court, arbitrator, administrative agency or other federal, state or local government authority, pending or, to the actual knowledge of the City, threatened against the City, wherein an unfavorable decision, ruling or finding would have a material adverse effect on the validity of this Agreement or material adverse effect on the transactions contemplated hereby.

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 Commitment. The Company agrees that:

(i) it will employ a total of 73 permanent full-time employees (inclusive of employees newly hired, transferred from other locations, or already working at the Company's sister plant in Hobart) by the end of 2023 and that the Company will have a total annual payroll in that year of not less than \$3,990,931. For the purposes of this Agreement, a full-time job is defined as a permanent, non-seasonal employment position requiring the employee to work not less than 40 hours per week, excluding periods of vacation, illness or personal time off; and

(ii) in each calendar year during the abatement period, the Company agrees that its total payroll shall be not less than the sums listed below for each year. Annual payroll is the total of wage or salary compensation paid to all full-time employees of the new facility for the period from January 1 through December 31 in each of those years:

2022	\$3,990,931
2023	\$4,090,704
2024	\$4,192,972
2025	\$4,297,796
2026	\$4,405,241
2027	\$4,515,372
2028	\$4,628,256
2029	\$4,743,963
2030	\$4,862,562
2031	\$4,984,126

b. Reporting Requirements. The Company agrees to deliver a written report to the City Department of Economic Development as of December 31, 2022 and thereafter as of the end of each calendar year during the abatement period through and including December 31, 2034. Such report shall be delivered

not later than fifteen days after the conclusion of the annual period for which the report is made, and shall include the following items:

(i) Such report need not contain the number of persons employed full-time by the Company and the total of wage or salary compensation paid to all full-time employees of the new facility for the reported year if this information is reported and filed on the Company's Form CF-1. Determination of compliance with the employment commitments made in Sub-subsection (a) above shall be made in accordance with Section 4 (b) below.

(ii) At the time the company's CF-1 is filed, and during the abatement period, the Company shall give, in writing, a general status report on the installation of Equipment completed to date and an update on the project schedule. This information will be given until all abated Equipment is installed.

(iii) Upon substantial completion of the installation and commissioning of the Equipment, the Company agrees to report or cause to be reported to the City, in writing, through the office of the Mayor and Department of Development:

- (A) the total number of local contractors or sub-contractors (as defined in Subsection (c) below) involved in such installation; and
- (B) the number of contractor jobs required for such installation; and
- (C) the total cost of installation of the Equipment by the Company.

(iv) In addition, the Company agrees to give the City, through the office of the Mayor and Department of Development, written notice of any removal, replacement or significant modification to the Equipment or any part thereof at least 30 days prior thereto, unless:

- (A) said removal, replacement or modification reduces the then-current assessed value of the equipment by less than ten percent (10%); or
- (B) the equipment is being replaced in the ordinary course of business.

Such removal, replacement or modification, other than those exempted under sub-sub sections (A) and (B) above may result in the denial of the amount of tax abatement due in any year, in whole or in part.

c. Equipment Installation. The Company agrees that, during the abatement period (January 1, 2023 through December 31, 2034), it will adhere to the following policy on installation of equipment in the newly constructed building:

(i) Installation of racking, shelving, relocated inventory and installation of equipment that does not require electrical hookup will be performed by the Company's own employees.

(ii) Utility and equipment installations performed during the construction of the new facility will be done by Becknell Industrial's suggested contractors;

(iii) Once the Company has taken possession of the building, the Company will be using OEMs (Original Equipment Manufacturers) and the Company's preferred contractors. OEMs will be providing equipment, installation services and commissioning as turnkey projects for a fixed price. Similarly, preferred contractors will quote an "all in" cost, which includes equipment, material, and labor.

d. Local Contractors. The Company further represents and agrees that during the period of the tax abatement incentives granted by the City pursuant to this Agreement, any local suppliers or contractors based in the City of Hobart with suitable expertise and competitive bids shall be favorably considered for all work contracted by the Company at the Hobart location. Local suppliers and local contractors are defined as contractors and suppliers primarily engaged, reside in or have their principal office in Hobart or employ a significant number of Hobart residents.

e. Payments and Appeals. The Company shall pay, when due, all personal property taxes assessed for the Equipment, less those personal property taxes for which an abatement (deduction) has been granted under this Agreement. Personal property tax appeals for the Equipment or any part thereof shall be governed by the following requirements:

(i) The Company agrees to refrain from materially reducing the reported acquisition cost, acquisition year or depreciation pool (as per the Baker Tilly Municipal Advisors, LLC analysis of September 23, 2021 attached as Exhibit "B" to this Agreement) for the Equipment for any year in which the personal property tax abatement granted under this Agreement is in effect which would have the effect of reducing the net personal property taxes payable for the Equipment for that year below the amounts as stated in the following table, provided that the current cost of the Equipment is

greater than or equal to \$34,979,000. In the event that the actual acquisition cost of the proposed Equipment is less than \$34,979,000, the amount indicated in the table below for that year will be reduced by the percentage by which the actual acquisition cost is less than \$34,979,000 so that the net taxes to be paid under this Agreement are reduced proportionately. The types of equipment to be installed, the timing of installation, and the estimated value of each group of equipment are specified upon Exhibit "A." It is expected that the Company will annually pay taxes for all personal property, including that which is not eligible for property tax abatement, in an amount not less than those listed in the table below, and in the event that actual personal property taxes due are less than the minimum amount listed in the table the difference between actual personal property taxes due and the minimum personal property tax amount will be payable to the City:

Taxes Payable Year	Minimum Property Taxes to be paid on the Proposed Personal Property Investment (per page 3 of the September 23, 2021 Analysis by Baker Tilly Municipal Advisors LLC attached as Exhibit "B")
2024	\$ 0
2025	48,800
2026	73,510
2027	67,330
2028	98,550
2029	129,430
2030	158,440
2031	185,050
2032	211,600
2033	238,140
2034	264,680

Because changes in the assessed value of the proposed personal 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 personal 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. The above and foregoing table is also subject to adjustment by the City to reflect

the actual acquisition costs of the Equipment demonstrated by the Company. The City will notify the Company of any such adjustments in writing.

Annual Recalculation. On or before March 1 of each year during the effective period of the above-stated minimum net personal 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 Equipment 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) The Company represents and affirms that, at the time of its execution of this Agreement, there are no appeals currently pending or anticipated to be filed by the Company or affiliated companies for any personal property owned within the City of Hobart by the Company or affiliated companies now or to be acquired during the next twelve (12) months. With respect to any appeal to be filed by the Company or its affiliated companies for personal property located in the City within the period commencing with the taking effect of this Agreement and ending fifteen (15) years later, the Company agrees to provide to the City through its Mayor and Director of Development, fifteen (15) days in advance of filing any personal property tax appeal for the Equipment or any part thereof, a written explanation as to why the appeal is being filed, along with complete copies of the appeal documents, including all schedules and exhibits. Likewise, the Company shall give written notice to the City fifteen (15) days in advance of making or filing any material changes in the reporting of the acquisition cost, acquisition year, depreciation classification or other characteristic of the Equipment that may affect the net assessed value of that personal property, including the filing of an amended personal property tax return. If any of the changes described in the preceding sentence are made, a copy of the personal property assessment forms shall be provided to the City together with a description of the changes.

(iii) The Company agrees to pay the compliance review fee required by HMC §32.002 (B) which states that: “An applicant for personal property tax abatement pursuant to I.C. 6-1.1-12.1, or a party that has been previously granted a personal property tax abatement under that chapter of the Indiana Code, prior to the action of the Common Council finalizing the abatement or approving annual compliance, for as long as the abatement remains in effect, shall annually pay to the Clerk-Treasurer of the City a fee in the amount of \$2,500 [or such increased fee as the Municipal Code of the City of Hobart may prescribe in each future year during the abatement period] for the services of the City’s financial consultant in reviewing the documents and supporting information submitted by the applicant or party holding a personal property abatement, to determine whether the minimum assessed valuation requirements and the resulting personal property tax payments of the abatement have been satisfied.”

(iv) The material representations and agreements made by the Company and contained in its Application 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.

f. Commitment to Remain in Hobart. Except in the case of an assignment of the assets covered by this Agreement under Section 21, the Company agrees to maintain its current facilities, including the Equipment (unless retired or replaced by new equipment) through the expiration or termination of its lease with the building owner.

g. 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 and throughout its term:

(i) The Company is a validly organized and existing Delaware corporation admitted to do business 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, Operating Agreement or any shareholder 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 best 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 facility and installation of the Equipment on the site described above subject to and in accordance with the terms and conditions of this Agreement.

4. Imposition of Sanctions. Upon the grant of the personal property tax abatement (deduction) by the Council described in Section 2, above, and from and after their implementation by the taxing authorities of Lake County, in whole or in part, and such grant results in the reduction of the amount of such personal property taxes for which the Company would otherwise have been liable in any year in which such deduction or deductions were in effect, then the Company, its successors by merger or acquisition, or its assigns shall be subject to the following sanctions, in the form of the cash repayment to the City in an amount equal to the actual amount of the reduction of the personal property tax deductions granted herein, multiplied by the percentage of the sanction specified upon the occurrence of any one or more than one of the events stated below in Sub-Section (a):

a. Events Allowing the Imposition of Sanctions. The City may impose a cash payment to be made by the Company as a sanction upon the occurrence of any one or more than one of the following events:

(i) The closure or suspension of manufacturing operations in the Company's new manufacturing facility, including the Equipment, for a period of more than 180 consecutive days during the term of this agreement unless such closure or suspension is caused by one of the following events outside of the Company's control, such as casualty, the need to renovate the building, destruction of all or a substantial portion of the building by the Act of God, inclement weather, riot or civil insurrection, impossibility of obtaining adequate raw materials and supplies to support production despite the Company's best efforts to obtain them.

(ii) The seizure, attachment or foreclosure of the facility or the Equipment which results in suspension or cessation of manufacturing operations for a period of more than 180 consecutive days during the term of this Agreement;

(iii) Failure to maintain a payroll of equal to or greater than 90% of the minimum payroll commitment contained in Section 4 (c) (i) of this Agreement;

(iv) Failure repeatedly to conform to the policy on installation of equipment contained in Section 3 (c) of this Agreement; and

(v) Failure to comply with the tax payment and appeals provisions contained in Section 3(d) of this Agreement.

b. Manner of Imposing Sanctions. In the event that the City preliminarily determines that any one or more than one of the events allowing the imposition of sanctions upon the Company has occurred under sub-subsections (i) through (iv) of subsection (a) of this section, the City shall proceed to notice and hearing of the matter as prescribed in I.C. §6-1.1-12.1-5.9 before the Common Council of the City. The Council shall determine whether one or more than one of said events has occurred and determine, in accordance with subsection (c) below, whether and to what extent a sanction should be imposed upon the Company.

c. Amount of Sanctions to be Applied.

(i) Payroll Commitment. The failure of the Company to meet its payroll commitment under Section 3(a)(ii) of this Agreement in any one year may result in the imposition of a sanction in any one year calculated as follows:

Percentage by which the Actual annual payroll fails to Amount to the minimum Amount specified in Section 3(a)(i)	Sanction: (% of abatement savings actually received for reported year of deduction Beginning with Tax Payable Year 2024 through Tax Payable Year 2034 to City)
0 to 10%	0
11 to 21%	15%
22 to 33%	25%
34 to 45%	35%
46 to 54%	45%
55 to 100%	60%

Sanctions for more than one violation of this Agreement in any one year are cumulative, but the total of such sanctions shall not exceed 100% of the personal property taxes saved by the abatement deduction in any one year.

After assessment year 2032, tax payable year 2033 (reporting year 2034), there shall be no sanction applied to abatement of personal property taxes.

(ii) *Payments and Appeals.* Violation of the requirements contained in Section 3 (e) on Payments and Appeals may result in the imposition by the Common Council of the City of a repayment by the Company to the City in cash in an amount to be determined by the Council, not to exceed the actual amount of tax abatement savings for personal property taxes for the year or years appealed, up to or equal to the full amount of the tax reduction sought by the Company through the appeal, provided the Company seeks reduction below the anticipated assessed value in Section 3 (e) (i).

(iii) *Closure, Suspension of Operations, Sale, Seizure, Foreclosure or Attachment of the Equipment.* In the event of the occurrence of any one or more than one of the events described in Section 4 (a) (i) & (ii) above, the Common Council of the City, in its sole discretion, may reduce, suspend or terminate the amount of the personal property deductions granted pursuant to this Agreement. Any such reduction, suspension or termination shall be effective as of the date of such determination and shall not apply retroactively to any personal property deductions granted pursuant to this Agreement.

d. Terms and Manner of Payment. When the City determines that sanctions under this section are due from the Company, the City Clerk-Treasurer shall prepare a written invoice containing the amount due and a description of the method used in determining said amount and shall transmit such invoice to the person or persons in the Company designated to receive notices and demands under Section 16 of this Agreement. The full amount of the invoice is due thirty (30) days from the date of receipt, and payment shall be made to the Clerk-Treasurer, City of Hobart, 414 Main Street, Hobart, Indiana 46342. Except in the case of manifest error, the calculation by the City with respect to sanctions under this section shall be final and binding.

e. Termination of Section 4. The effectiveness of the provisions of this Section 4 shall expire December 31, 2034.

5. 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.

6. 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.

7. 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 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, which shall survive such invalidation, nullification, or setting aside.

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 but may be taken into account by the Common Council in judging annual compliance with the Form SB-1 and CF-1.

9. 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.

10. No Agency, Joint Venture or Partnership. It is specifically understood and agreed to by and between the Parties that the Equipment acquisition and installation by the Company 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.

11. 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.

12. 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.

13. 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, and 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.

14. 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.

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

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.

18. 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.

19. 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.

20. 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.

21. 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. Notwithstanding the foregoing language of this section, the Company, upon thirty (30) days prior written notice to the City, may, without the City's consent, which notice shall be accompanied by a reasonably satisfactory explanation as to why the City's consent is not required hereunder, to assign this Agreement to an Affiliate of the Company or an entity that results from a merger or corporate reorganization of the Company. As used in this section, the term "Affiliate" shall mean and refer to (i) any entity which is controlled by, controls or is under common control with the Company or (ii) any entity to which all or substantially all of the Company's stock or assets have been sold.

22. 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.

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

24. Effect of Delay. The Company agrees to use its best efforts to occupy its new building by December 31, 2022 and to install the Equipment by dates specified for first assessment on page 2 of the September 23, 2021 Analysis by Baker Tilly Municipal Advisors LLC attached as Exhibit "B." In the event that the building or installation of the Equipment is delayed such that the assessment of the Equipment for personal property tax purposes cannot be accomplished by such dates, 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 personal property taxes to be paid in Section 3 (e) (1) of this Agreement. 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 for business by December 31, 2022, the City may, upon its sole determination, terminate this Agreement and the property tax incentive granted herein in the manner provided by law.

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

[signature pages follow this page]

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 _____, 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 ____ 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 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.

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: _____

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, PC
2929 Carlson Drive, Suite 300, Hammond, IN 46323
Ph. 219.440.7550; Email: dwestland@westlandbennett.com

Regular meetings are held on the 1st and 3rd Wednesdays of each month in the Council Chambers, 2nd floor, Hobart City Hall

CITY OF HOBART

AGENDA ITEM REQUEST FORM

(Please Print)

Meeting Date: November 3, 2021

 X Board of Public Works (3:30 p.m.)

 Common Council (6:00 p.m.)

Item to be Added to Agenda: Resolution 2021-08 A Resolution to **Approve and Authorize the Execution of a Development Agreement** between the City of Hobart and 2100 E. 69th Avenue, LLC. This Resolution is regarding a development agreement for PERSONAL Property tax abatement for property located at 2400 E. 69th Avenue.

Brief Description of Request for Consideration:

The Development Agreement is attached.

Supporting Documentation Attached: Development Agreement for Personal Property Tax Abatement.

Request Submitted by: Beth Jacobson

Address (Department): Economic Development

Phone Number (Ext.): 219.942.5517

Date Submitted: October 26, 2021

Turn in Completed Request Form to the Clerk-Treasurer's Office, Hobart City Hall