

**COMMON COUNCIL OF THE CITY OF HOBART, INDIANA**

**RESOLUTION NO. 2018- 11**

**A Resolution Approving the Executed Development Agreement between  
the City of Hobart and ITR America, LLC**

WHEREAS, the Common Council (“Council”) of the City of Hobart, Lake County, Indiana (“City”) adopted Resolution No. 2018-07 on April 4, 2018 declaring that the area commonly known as 6411 North Wind Parkway, Hobart, Lake County, Indiana 46342, 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 real and personal property tax abatements in accordance with I.C. 6-1.1-12.1, *et seq.*; and

WHEREAS, said Resolution was adopted pursuant to the application of ITR America, LLC (“ITR”) for the construction of a manufacturing facility in the City, and the Council subsequently adopted its Resolution No. 2018-08 on May 2, 2018, after public hearing duly noticed in the manner required by law, confirming such designation and abatements; and

WHEREAS, the ITR project is subject to the application of the City’s Responsible Bidding Practices Ordinance, as amended (HMC §§33.200 to 33.207), which also provides that the effect of that Ordinance may be waived by the Council. The Council, recognizing that Becknell Industrial will act as general contractor for the project, and taking note of the many projects constructed by Becknell in the City which have adhered to consistently high standards of construction, finds that Becknell is a Responsible bidder and contractor within the meaning and intent of the Ordinance, and desires to waive the application of the Ordinance to the ITR project; and

WHEREAS, under its terms, Resolution No. 2018-08 becomes effective upon the execution and delivery of a written Development Agreement by and between the City and ITR; and

WHEREAS, the Board of Public Works and Safety of the City, at its public meeting of even date herewith, approved and authorized the execution of a Development Agreement by and between the City and ITR which was thereupon duly executed; and

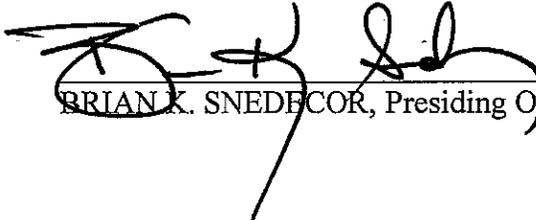
WHEREAS, the Council now desires to waive the application of the City’s Responsible Bidding Practices Ordinances and approve said Executed Development Agreement, thereby allowing it to become effective and in force.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Hobart as follows:

1. The application of the City of Hobart Responsible Bidding Practices Ordinance, as amended, to the above-described project of ITR America, LLC is hereby waived in all respects.

2. The Development Agreement between the City of Hobart and ITR America, LLC attached hereto is approved and allowed to become effective according to its terms.

ALL OF WHICH IS ADOPTED on this 6<sup>th</sup> day of JUNE, 2018 by the Common Council of the City of Hobart, Indiana.

  
BRIAN K. SNEDECOR, Presiding Officer

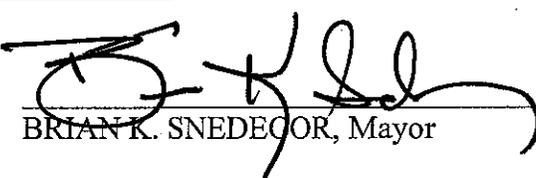
ATTEST:

  
DEBORAH A. LONGER, Clerk-Treasurer

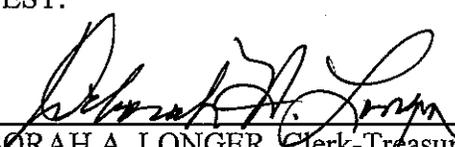
PRESENTED by me to the Mayor of the City of Hobart on the 6<sup>th</sup> day of JUNE, 2018, at 7:00 ~~am~~ p.m.

  
DEBORAH A. LONGER, Clerk-Treasurer

APPROVED, SIGNED AND RETURNED by me to the Common Council of the City of Hobart, on this 6<sup>th</sup> day of JUNE, 2018.

  
BRIAN K. SNEDECOR, Mayor

ATTEST:

  
DEBORAH A. LONGER, Clerk-Treasurer

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**DEVELOPMENT AGREEMENT**

by and between

**THE CITY OF HOBART, INDIANA,**

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

and

**ITR AMERICA, LLC**

June \_\_, 2018

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**TABLE OF CONTENTS**

<b>Section</b>	<b>Title</b>	<b>Page</b>
	Recitals	4
1.	Duties of the Company . . . . .	5
2.	Duties of the City . . . . .	6
3.	Additional Covenants and Representations of the Company . . .	8
	a. Employment . . . . .	8
	b. Local Sub-Contractors . . . . .	8
	c. Union Labor . . . . .	8
	d. Tax Payments and Appeals . . . . .	8
	(i) Real Estate Property Tax Appeals . . . . .	8
	(ii) Personal Property Tax Appeals . . . . .	9
	(iii) Notice and Copy of Appeals & Related Documents	10
	(iv) Compliance Review Fee for Personal Property . . .	10
	(v) Representations & Agreements Incorporated . . . .	11
	e. Other Representations of the Company . . . . .	11
4.	Return of Benefits . . . . .	12
	a. Events Requiring Reimbursement and Repayment . . . . .	12
	b. Amount of Reimbursement and Repayment . . . . .	12
	c. Termination of Section 4 . . . . .	12
5.	Reporting Obligations During Construction . . . . .	13
6.	Material Consideration . . . . .	13
7.	Mutual Assistance . . . . .	13
8.	Cooperation . . . . .	13
9.	Enforcement and Attorney Fees . . . . .	13

65 10. No Agency, Joint Venture or Partnership . . . . . 14  
66 11. Conflict of Interest; Representatives not Individually Liable . . . . . 14  
67 12. Future Acts and Good Faith . . . . . 14  
68 13. Waiver of Jury Trial . . . . . 14  
69 14. Severability . . . . . 14  
70 15. No Other Agreement . . . . . 15  
71 16. Counterparts . . . . . 15  
72 17. Notices and Demands . . . . . 15  
73 18. Governing Law . . . . . 16  
74 19. Authority . . . . . 16  
75 20. No Third-Party Beneficiaries . . . . . 16  
76 21. Assignment . . . . . 16  
77 22. Amendments . . . . . 16  
78 23. Default . . . . . 16

79

**SCHEDULE OF EXHIBITS**

81 Exhibit A: Analysis by H.J. Umbaugh & Company Certified Public Accountants,  
82 LLP, Dated March 27, 2018 . . . . . 20  
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**DEVELOPMENT AGREEMENT**

THIS AGREEMENT is made and entered into on the \_\_\_\_\_ day of June, 2018 by and between ITR AMERICA, LLC, a Mississippi Limited Liability Company admitted to do business in the State of Indiana with principal offices located at 6301 Northwind Parkway, Hobart, Indiana 46342 (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 manufacturing and distributing components related to the construction equipment industry that are supplied to OEMs and dealers for use on popular earthmoving equipment. The Company previously established a distribution center in Hobart, Indiana in 2013, and has made application to the City for financial incentives to construct an approximately 90,000 square foot light manufacturing and distribution building of pre-cast concrete construction with loading docks, related paved drives and parking, located adjacent to its existing facility upon real estate commonly known as 6411 NorthWind Parkway, Hobart, Indiana 46342 and legally described as follows:

Lot 3B of Replat No. 1 of North Wind Crossings—Unit Two, an Addition to the City of Hobart, Lake County, Indiana, as per plat thereof recorded on June 26, 2012 in Plat Book 105, page 73 in the Office of the Recorder of Lake County, Indiana.

Said proposed building and accompanying equipment is referred to herein as the “new facility” or “project,” 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’s new facility will occupy a site of approximately 8.095 acres in NorthWind Crossings, a Class A industrial park, very near the interchange of I-65 and 61<sup>st</sup> Avenue in the City. In connection with the construction of the facility, ITR has engaged the services of Becknell Industrial, the developer and operator of NorthWind Crossings, and has applied to the City for the grant of real estate and personal property tax abatements under I.C. §6-1.1-12.1-1, *et seq.*; and

WHEREAS, the City and the Company have reached agreement upon the promises, terms and conditions upon which the City will grant such abatements to the Company, which abatements are important to ITR in assuring the financial viability of the project and its

141 subsequent profitability, and the parties now wish to document their agreements in this  
142 instrument.

143

144 THEREFORE, IN CONSIDERATION of the mutual promises, terms and conditions  
145 hereinafter set forth and intending themselves to be legally bound, the parties agree as follows:  
146

147

148 **1. Duties of the Company.** The Company, for itself and for its officers,  
149 directors and employees, agrees to undertake and perform the following duties:

150

151 a. Timely complete the purchase of and close the transfer of title to  
152 the above described real estate;

153

154 b. Cause the construction and operation of its proposed new facility  
155 in Hobart, Indiana in substantial and material conformance to the written  
156 applications, Statements of Benefit forms, plans and specifications submitted to  
157 and approved by the City;

158

159 c. Comply with all applicable requirements of the City's Zoning  
160 Ordinance, particularly the site review process as applied to Planned Unit  
161 Developments for Manufacturing, Office Service or Planned Business Parks as  
162 required by Hobart Municipal Code (HMC) §154.296 (B) and the design  
163 guidelines appearing in HMC §154.308, the City's Building Codes, and the orders  
164 and actions of the City Plan Commission, Board of Zoning Appeals and Common  
165 Council;

166

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

171

172 e. Pay in full, when required, all City fees prescribed by ordinance in  
173 connection with the construction of its facility and the tax deduction and  
174 abatement process, including, but not limited to building permit fees, abatement  
175 application and exaction fees, financial impact and analysis fees and compliance  
176 review fee.;

177

178 f. Make all filings of applications, Forms SB-1 and CF-1 when due  
179 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  
180 5.3;

181

182 g. Pay all property taxes levied upon the real and personal property of  
183 ITR in connection with the facility when due subject only to Section 3 (d) below  
184 on tax appeals;

185

186 h. Within 30 days of the taking effect of this Agreement, sign and  
deliver to the City a sworn affidavit pursuant to I.C. §22-5-1.7-11 that affirms that

187 ITR has enrolled and is participating in the E-Verify program, provides  
188 documentation to the City that ITR is participating in the E-Verify program, and  
189 signs an affidavit affirming that ITR does not knowingly employ an unauthorized  
190 alien;

191  
192 i. Refrain from any discrimination in employment on account of  
193 race, religion, gender, color, national origin, sexual orientation, disability or age  
194 under Title VII of the Civil Rights Act of 1964, the Age Discrimination in  
195 Employment Act, the Americans with Disabilities Act, and any other federal law,  
196 similar state law or local ordinance applicable to the Company’s operations at the  
197 new facility;

198  
199 j. Comply with all applicable laws of the City of Hobart, the State of  
200 Indiana and the United States in the construction, operation and maintenance of  
201 the Company’s business and property at the new facility;

202  
203 k. Record this fully-executed Agreement in the Office of the Lake  
204 County Recorder, Crown Point, Indiana at the Company’s expense, and deliver  
205 copies of the recorded Agreement to the City Clerk-Treasurer and the City  
206 Department of Development. This Agreement shall take effect upon its execution  
207 and said recordation; and

208  
209 l. Comply with all provisions of this Agreement.

210  
211 **2. Duties of the City.** The City, the Board, their officials and employees agree to  
212 undertake and perform the following duties:

213  
214 a. Approve the designation of the site of the new facility as an  
215 Economic Revitalization Area pursuant to I.C. §6-1.1-12.1-1, *et seq.*, for the  
216 purpose of qualifying the new facility for the grant of real and personal property  
217 tax abatement. The parties agree that the abatements to be granted by the City  
218 will conform to the following terms. These tax years are based upon information  
219 provided by the Company. The Company agrees to notify the City in writing if  
220 construction completion or equipment installation is delayed or accelerated, which  
221 may affect the tax years in the following tables:

222  
223 Real Property:

224  
225 Estimated Cost \$ 5,500,000  
226 Estimated Assessed Value: 4,675,000

227  
228 Deduction Period: Ten Years

229  
230 Deduction Schedule: Year One 100%  
231 Year Two 95%  
232 Year Three 80%

233	Year Four	65%
234	Year Five	50%
235	Year Six	40%
236	Year Seven	30%
237	Year Eight	20%
238	Year Nine	10%
239	Year Ten	5%

240 Personal Property

241  
242 Total Estimated Amount of Equipment to be Purchased: \$ 539,820.00

243  
244 Deduction Period: Ten Years

245	Deduction Schedule:	Year One	100%
246		Year Two	90%
247		Year Three	80%
248		Year Four	70%
249		Year Five	60%
250		Year Six	50%
251		Year Seven	40%
252		Year Eight	30%
253		Year Nine	20%
254		Year Ten	10%

255  
256  
257 b. Provide assistance, advice, and guidance to ITR at its request  
258 concerning any of the matters discussed in this Agreement.

259  
260 c. Provide all City services customarily provided by the City to  
261 businesses similar to the Company located in Ross Township including, but not  
262 limited to, police, fire prevention and suppression, storm water management,  
263 street and infrastructure management of City thoroughfares.  
264 The Company understands that:

265  
266 (i) Waste water collection, treatment and disposal is not the  
267 responsibility of the City of Hobart, but of the Merrillville Conservancy  
268 District, and that water service is the responsibility of Indiana American  
269 Water Company, a privately-owned public utility; and

270  
271 (ii) The assessment of real property is the responsibility of the  
272 Ross Township Assessor, the application of the deduction to the  
273 Company's assessed value is the responsibility of the Lake County  
274 Auditor, and personal property assessment, including the calculation and  
275 application of deductions, is the responsibility of the Company.  
276

277 **3. Additional Covenants and Representations of the Company.** In  
278 addition to the duties of the Company specified in Section 1 above, the Company agrees to  
279 adhere to and carry out the following commitments and representations:  
280

281 a. Employment

282 The Company represents and agrees that the new facility will result in the creation  
283 and addition of not less than eight (8) additional full-time jobs during the period  
284 of the tax abatement incentives to be granted by the City pursuant to this  
285 Agreement, and that the total payroll of said new jobs shall not be less than  
286 \$409,500.00 annually during such period. For purposes of this Agreement, "full-  
287 time" describes any employee working at least forty (40) hours per week.  
288 Employees of the Company and any other entity working exclusively or primarily  
289 at the new facility (e.g., trucking, logistics, technology, janitorial, maintenance)  
290 will be included as "employees" for the purpose of this Section and this  
291 Agreement. The Company has determined that the new facility will result in  
292 approximately 55 retained construction jobs, the total payroll for such  
293 construction personnel being not less than \$2.2 million during the period of the  
294 construction of the new facility which is estimated to be completed by January 31,  
295 2019. This is an estimated figure based on forty percent (40%) of the total cost of  
296 construction. Compliance with the above construction payroll shall be determined  
297 solely by the actual total construction cost and payroll at the conclusion of  
298 construction, irrespective of the actual number of retained jobs achieved.  
299

300 b. Local Sub-Contractors

301 The Company further represents and agrees that during the period of the tax  
302 abatement incentives to be granted by the City pursuant to this Agreement, any  
303 sub-contractors based in the City of Hobart or Lake, County, Indiana, with  
304 competitive bids shall be preferred for all work contracted by the Company at the  
305 Hobart location.  
306

307 c. Union Labor

308 The Company's contractor has represented that it will employ union labor in the  
309 construction of the new facility.  
310

311 d. Tax Payments and Appeals

312 The Company shall pay, when due, all real and personal property taxes assessed for the  
313 new facility. Property tax appeals shall be governed by the following requirements:  
314

315 (i) *Real Estate Property Tax Appeals:* The Company agrees  
316 to refrain from filing or otherwise pursuing any real property tax appeal  
317 regarding the new facility for any year in which the real property tax  
318 abatement granted under this Agreement is in effect, and which would  
319 have the effect of reducing the net real estate property taxes payable for  
320 the new facility for that year stated in the following table, provided that,  
321 the assessed value of the real property improvements for the new facility  
322 reaches \$ 4,675,000.00. In the event that the assessed value of the real

323 property of the new facility is less than \$ 4,675,000.00, the amount  
 324 indicated in the table below for that year will be reduced by the percentage  
 325 by which the actual valuation is less than \$ 4,675,000.00, so that the net  
 326 taxes to be paid under this no appeal agreement, is reduced  
 327 proportionately:  
 328

329 Taxes Payable Year	Property Taxes to be Paid on the 330 Proposed Real Property Investment 331 (per the March 27, 2018 Analysis by 332 H.J. Umbaugh & Company Certified 333 Public Accountants, LLP attached as 334 Exhibit "A")
336 2021	\$ 0
337 2022	6,060.00
338 2023	24,230.00
339 2024	42,410.00
340 2025	60,580.00
341 2026	72,700.00
342 2027	84,820.00
343 2028	96,930.00
344 2029	109,050.00
345 2030	115,110.00

347 (ii) *Personal Property Tax Appeals:* The Company agrees to  
 348 refrain from materially reducing the reported acquisition cost, acquisition  
 349 year or depreciation pool (currently assumed to be Pool Nos. 2 or 3 as per  
 350 Umbaugh analysis of March 27, 2018 attached as Exhibit "A" to this  
 351 Agreement) for the new equipment for any year in which the personal  
 352 property tax abatement granted under this Agreement is in effect which  
 353 would have the effect of reducing the net personal property taxes payable for  
 354 the new manufacturing equipment for that year as stated in the following  
 355 table below, provided that the acquisition cost of the personal property is  
 356 greater than or equal to \$539,820.00. In the event that the acquisition cost  
 357 of the proposed personal property investment is less than \$539,820.00, the  
 358 amount indicated in the table below for that year will be reduced  
 359 accordingly, so that the net taxes to be paid under this Agreement is  
 360 reduced.  
 361

362 Taxes Payable Year	Property Taxes to be paid on the Proposed 363 Personal Property Investment (per the March 27, 364 2018 Analysis by H.J. Umbaugh & Company 365 Certified Public Accountants, LLP attached as 366 Exhibit "A")
368 2021	\$ 0
369 2022	0

370	2023	0
371	2024	0
372	2025	0
373	2026	850.00
374	2027	1,760.00
375	2028	2,560.00
376	2029	3,230.00
377	2030	3,790.00

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(iii) *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 appeals currently pending or anticipated to be filed by the Company or affiliated companies for any property owned within the City of Hobart by the Company or affiliated companies now and during the next eighteen (18) months. With respect to any appeal to be filed by the Company or its affiliated companies for property located in the City within the ten-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 or personal 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. 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 existing and proposed personal property investment that may affect the net assessed value of personal property, including a 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.

(iv) *Compliance Review Fee for Personal Property Tax Abatement and Reimbursement Agreement:* 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 \$1,500 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.” With respect to real property tax abatement, the Company agrees to execute a Reimbursement Agreement pursuant to HMC §155.01, *et seq.*, on an annual basis while the real property tax abatement period is in effect if needed by the City to defray the cost of the services required of the City’s

416 financial advisor to review compliance with the minimum tax payments  
417 prescribed in sub-subsection (d) (i), above.

418  
419 (v) *Representations and Agreements Incorporated by Reference.* The  
420 material representations and agreements made by the Company and contained in  
421 its Applications for Tax Abatement, forms SB-1, CF-1, and all exhibits and  
422 schedules attached thereto or referenced therein shall be deemed to be  
423 incorporated into this Agreement by reference and made an integral part hereof.  
424

425 e. Other Representations of the Company.

426 The Company hereby makes the following representations and warranties, and  
427 acknowledges and agrees that such representations and warranties have been material to  
428 the City Parties' decisions to enter into this Agreement, and further agrees that each  
429 representation and warranty shall be true, accurate and complete as of the execution of  
430 this Agreement and throughout its term:  
431

432 (i) ITR is a Limited Liability Company validly organized and existing under  
433 the laws of the State of Mississippi and is admitted to do business as a foreign business  
434 organization in the State of Indiana;  
435

436 (ii) All necessary action has been taken to authorize the Company's execution  
437 of this Agreement; the Company possesses the requisite power to enter into this  
438 Agreement and all other agreements contemplated hereby, and to perform its obligations  
439 hereunder; and this Agreement constitutes a legal, valid and binding obligation of the  
440 Company enforceable against it in accordance with its terms, subject to bankruptcy,  
441 insolvency, reorganization, moratorium and other similar laws affecting creditors rights  
442 heretofore or hereafter enacted and subject to the exercise of judicial discretion in  
443 accordance with general principles of equity;  
444

445 (iii) Neither the execution and delivery by the Company of this Agreement, the  
446 consummation of the transactions contemplated herein, nor compliance with the  
447 provisions hereof violates, breaches, contravenes, conflicts with, or causes a default  
448 under any provision of the Articles of Organization or Operating Agreement of the  
449 Company or any provision of any existing note, bond, mortgage, debenture, indenture,  
450 trust, license, lease, instrument, decree, order, judgment or agreement to which the  
451 Company is a party or by which it or its assets may be bound or affected;  
452

453 (iv) No litigation or proceeding in any court or before any other governmental  
454 authority or other person or entity is currently pending or, to the best knowledge of the  
455 Company, threatened, which seeks to enjoin the Company from entering into this  
456 Agreement or any of the transactions contemplated hereby; and  
457

458 (v) The Company is entering into this Agreement for the sole purpose of  
459 providing for the development of the new facility on the site described above subject to  
460 and in accordance with the terms and conditions of this Agreement.  
461

462 (vi) The Company represents that it has engaged Becknell Industrial, Inc. as  
463 general contractor for the construction of the new facility.  
464

465 **4. Return of Benefits.** Upon the grant of the real and personal property tax  
466 deductions by the Council described in Section 2, above, and from and after their implementation  
467 by the taxing authorities of Lake County, in whole or in part, and such grant results in the  
468 reduction of the amount of such real estate and personal property taxes for which the Company  
469 would otherwise have been liable in any year in which such deduction or deductions were in  
470 effect, then the Company, its successors by merger or acquisition, or its assigns shall repay and  
471 reimburse the City for such taxes saved upon the occurrence of any one or more than one of the  
472 events stated below in Sub-Section (a):  
473

474 a. Events Requiring Reimbursement and Repayment.

475 Within 90 days of the occurrence of any of the following events, the Company, its  
476 successors by merger or acquisition, or its assigns shall pay to the City, in full, the  
477 amount determined under the provisions of Sub-Section (b), by check or wire  
478 transfer made payable to the City, and delivered to the Office of Clerk-Treasurer,  
479 414 Main Street, Hobart, Indiana 46342, or such other governmental entity as the  
480 City may direct, in writing, provided that any of such events occur prior to the  
481 expiration of the period during which any abatement granted by the City pursuant  
482 to this Agreement is in effect:  
483

484 (i) The closure or suspension of manufacturing operations in  
485 the new facility for a period of more than 180 days;  
486

487 (ii) The closing of sale of the building for which deduction was  
488 granted by the City to a buyer who converts the building to a use other  
489 than the use for which the Company employed the building and who fails  
490 to maintain not less than the promised number of employees identified in  
491 Section 3 (a) above in the new facility.  
492

493 (iii) The seizure, attachment or foreclosure of the new facility  
494 which results in suspension or cessation of manufacturing operations.  
495

496 b. Amount of Reimbursement and Repayment. The total amount of real  
497 property taxes saved by the Company or its successors or assigns by reason of the  
498 grant of said deduction or deductions for all years during the ten (10) year period  
499 following such grant or grants, less the amount of any fee required for the  
500 deduction actually paid to the City, shall be repaid and reimbursed to the City by  
501 the Company or its successors and assigns upon the occurrence of any one or  
502 more than one of the events described, and at the time specified, above in Sub-  
503 Section 4 (a).  
504

505 c. Termination of Section 4.

506 The effectiveness of the provisions of this Section 4 shall expire two (2) years  
507 after the end of the abatement periods granted under this Agreement.

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**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 (as defined in Section 3(b) above) involved in the Project and the aggregate amount of construction payroll for such contracts related to the Project. As used herein, the term “local” is defined to mean Lake County, 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 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. 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 8, which shall survive such invalidation, nullification, or setting aside.

**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.

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

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

570           **12. Future Acts and Good Faith.** The Parties acknowledge and understand that  
571 (a) the Parties must take future actions to implement and maintain their respective obligations  
572 under this Agreement, and (b) certain of the representations, performance of the covenants, and  
573 agreements of the City Parties are subject to and contingent upon compliance with and  
574 completion of applicable statutory and administrative procedures, including, without limitation,  
575 any applicable public notice and public hearing requirements, official actions by governing  
576 bodies, and any remonstrance and appeal rights. Subject to compliance with and to the fullest  
577 extent permitted by applicable laws, each of the City Parties covenants that it shall diligently  
578 pursue and use its best efforts to do all things lawfully within its power, to take such future  
579 actions and to comply with all applicable statutory and administrative proceedings at such times  
580 and in such manner as to effectuate and implement the provisions and intent of this Agreement to  
581 the fullest extent possible in accordance with the time limits set forth herein, time being of the  
582 essence.

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

589           **14. Severability.** If any one or more than one of the covenants, terms or conditions  
590 of this Agreement should be determined by a court of competent jurisdiction to be unenforceable  
591 or contrary to law, such covenant, term or condition shall be null and void and shall be deemed  
592 separate from the remaining covenants and agreements herein contained and the remaining  
593 provisions of this Agreement shall be given effect to the extent practicable. Notwithstanding the  
594 foregoing, in the event any provision of this Agreement is determined to be invalid under any  
595 applicable law and therefore deemed void hereunder, and such voided provision prevents the

596 Company or the City Parties from realizing the intended benefits of this Agreement, then the  
597 Company and the City Parties agree to modify this Agreement in a manner that allows each of  
598 the Parties to realize the originally intended benefits of this Agreement to the greatest extent  
599 possible. If the Agreement cannot be so modified or amended to allow the Parties to realize the  
600 originally intended benefits of this Agreement, then the Company and the City Parties shall have  
601 the right to terminate this Agreement and upon such termination all rights and obligations under  
602 this Agreement shall be extinguished, and the Parties agree to execute such releases or other  
603 evidence of the extinguishment of such obligations as may be necessary.

604 **15. No Other Agreement.** With the exception of any written side agreements  
605 between the Company and the City concerning the reimbursement of expenses incurred by the  
606 City Parties prior to the execution of this Agreement, and as otherwise expressly provided herein,  
607 this agreement supersedes all prior agreements, negotiations and discussions relative to the  
608 subject matter hereof and is a full integration of the agreement of the parties.

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

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

617  
618 Company: \_\_\_\_\_  
619 \_\_\_\_\_  
620 \_\_\_\_\_  
621 \_\_\_\_\_  
622 \_\_\_\_\_  
623 With a copy to: \_\_\_\_\_  
624 \_\_\_\_\_  
625 \_\_\_\_\_  
626 \_\_\_\_\_  
627 \_\_\_\_\_  
628 \_\_\_\_\_

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

630 City: Mayor Brian K. Snedecor  
631 City of Hobart  
632 414 Main Street  
633 Hobart, IN 46342  
634  
635 With copies to: Denarie Kane  
636 Director of Development,  
637 City of Hobart  
638 414 Main Street

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Hobart, IN 46342  
  
Anthony DeBonis, Jr.  
City Attorney  
Anthony DeBonis, Jr. & Associates  
214 Main Street  
Hobart, IN 46342  
Attn: Anthony DeBonis, Jr.

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

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

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

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

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

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

672 **23. Default.** Any material failure by any Party to perform any term or provision of  
673 this Agreement, which failure continues uncured for a period of thirty (30) days following  
674 written notice of such failure provided to the defaulting party from another Party, unless such  
675 period is extended by written mutual consent (but any extension is at the non-defaulting Party's  
676 sole discretion), shall constitute a default under this Agreement ("Default"). Any notice given  
677 pursuant to the preceding sentence shall specify the nature of the alleged failure and, where  
678 appropriate, the manner in which said failure satisfactorily may be cured. If the nature of the  
679 alleged failure is such that it cannot reasonably be cured within such thirty-day period (provided

680 economic considerations may not be a factor in such delay), then the commencement of the cure  
681 within such time period, and the diligent prosecution to completion of the cure thereafter, shall  
682 be deemed to be a cure within such applicable period. Upon the occurrence of a Default, a non-  
683 defaulting Party may institute legal proceedings at law or in equity (including any action to  
684 compel specific performance) to enforce the observance and performance of any covenant,  
685 condition, obligation, or agreement of the defaulting party under this Agreement; provided, that,  
686 in no event shall any Party have the right to terminate this Agreement. If the Default is cured,  
687 then no Default shall exist and the noticing Party shall take no further action.

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

691 ITR AMERICA, LLC, a Mississippi  
692 Limited Liability Company (“Company”)

696 By: \_\_\_\_\_  
697 CHRISTOPHER GILLES,  
698 Chief Financial Officer

700 CITY OF HOBART, INDIANA (“CITY”)

704 By: \_\_\_\_\_  
705 BRIAN K. SNEDECOR, Mayor

707 ATTEST: \_\_\_\_\_  
708 DEBORAH A. LONGER, Clerk-Treasurer

711 CITY OF HOBART BOARD OF PUBLIC  
712 WORKS AND SAFETY (“Board”):

716 \_\_\_\_\_  
717 BRIAN K. SNEDECOR, Presiding Officer

718 \_\_\_\_\_  
719 THOMAS EHRHARDT, Member

722 \_\_\_\_\_  
723 RICH LAIN, Member

724 ATTEST: \_\_\_\_\_  
725 DEBORAH A. LONGER, Clerk-Treasurer

726 STATE OF INDIANA )  
727 ) ss:  
728 LAKE COUNTY )  
729

730 BEFORE ME, a duly appointed Notary Public in and for said county and state, appeared  
731 CHRISTOPHER GILLES, Chief Financial Officer of ITR America, LLC, a party to the above  
732 instrument and a person known to me, who acknowledged execution of same in such capacity, as  
733 his free and voluntary act, for the uses and purposes stated therein.  
734

735 IN WITNESS WHEREOF, I have affixed my signature and official seal on this \_\_\_\_\_  
736 day of June, 2018.  
737

738  
739 \_\_\_\_\_  
740 Notary Public

741  
742 Name Printed: \_\_\_\_\_

S E A L

743  
744 County of Residence: \_\_\_\_\_  
745 My Commission Expires: \_\_\_\_\_  
746

747  
748 STATE OF INDIANA )  
749 ) ss:  
750 LAKE COUNTY )  
751

752 BEFORE ME, a duly appointed Notary Public in and for said county and state, appeared  
753 BRIAN K. SNEDECOR and DEBORAH A. LONGER, Mayor-President of the City of  
754 Hobart Board of Public Works and Safety and Clerk-Treasurer of the City of Hobart, Indiana,  
755 respectively, signatories to the above instrument and persons known to me, who acknowledged  
756 execution of same in such capacities on behalf of said City, as their free and voluntary acts, for  
757 the uses and purposes stated therein.  
758

759 IN WITNESS WHEREOF, I have affixed my signature and official seal on this \_\_\_\_\_  
760 day of June, 2018.  
761

762  
763 \_\_\_\_\_  
764 Notary Public

765  
766 Name Printed: \_\_\_\_\_

S E A L

767  
768 County of Residence: \_\_\_\_\_  
769 My Commission Expires: \_\_\_\_\_  
770

771

772 STATE OF INDIANA )  
773 ) ss:  
774 LAKE COUNTY )  
775

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

781  
782 IN WITNESS WHEREOF, I have affixed my signature and official seal on this \_\_\_\_\_  
783 day of June, 2018.

784  
785  
786  
787 \_\_\_\_\_  
788 Notary Public  
789  
790 Name Printed: \_\_\_\_\_  
791  
792 County of Residence: \_\_\_\_\_  
793 My Commission Expires: \_\_\_\_\_  
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S E A L

807 I affirm under the penalty for perjury that I have taken reasonable care to redact each Social  
808 Security number in this document unless required by law. Anthony DeBonis, Jr.  
809

810 *This Instrument prepared by Anthony DeBonis, Jr., Hobart City Attorney,*  
811 *ANTHONY DeBONIS, JR. & ASSOCIATES ATTORNEYS AT LAW, LLC,*  
812 *214 Main Street, Hobart, Indiana 46342*  
813 *(219) 940-9963; Facsimile (219) 940-9965*  
814  
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CITY OF HOBART, INDIANA

ITR America

**ASSUMPTIONS**

The following investment assumptions are based on information provided by company representatives.

	<u>Estimated Cost</u>
<b>Real Property:</b>	
New Building Construction (2)	
- First assessed January 1, 2020 for taxes payable in 2021	\$5,500,000
<b>Depreciable Personal Property:</b>	
Existing Facility (3)	
- January 1, 2017 assessment taxes payable 2018	1,545,032
Proposed Investment (1)	
Pool #2 (4)	
- First assessed January 1, 2020 for taxes payable in 2021	116,000
Pool #3 (4)	
- First assessed January 1, 2020 for taxes payable in 2021	423,820
Subtotal	<u>539,820</u>
<b>Total Investment</b>	<u><u>\$7,584,852</u></u>

- (1) Per the Lake County Auditor's office.
- (2) Per investment information provided by ITR America LLC.
- (3) Per the Indiana Business Tangible Personal Property Assessment Return completed by ITR America, LLC for January 1, 2017 taxes payable 2018.
- (4) Based on information provided by the Company, it has been assumed that the equipment will be purchased as new and be depreciated in Pool # 2 (5-8 year useful life) or Pool # 3 (9-12 year useful life) respectively, for property tax purposes. Once installed, the Company may report the depreciation in a different pool, which may have a material effect on the resulting tax increment calculations. No assumption has been made for future equipment retirement/replacement.

<b>Property Tax Rates</b>	
Certified Pay 2018 Tax Rate	
- Hobart Corp.-Ross Twp. Taxing district	\$2.9791

Note: Indiana Code 6-1.1-20.6 provides taxpayers with a tax credit for all property taxes in an amount that exceeds the gross assessed value of real and personal property (the "Circuit Breaker Tax Credit"). For commercial and industrial property, the Circuit Breaker Tax Credit reduces a taxpayer's tax liability to 3% of their property's gross assessed value. The Indiana property tax caps, in combination with other potential future changes, such as increases in budgets and tax rates of overlapping taxing units, a loss of a major taxpayer, the adoption of local option income tax for property tax relief purposes, or future changes in Indiana property tax law and regulations, could affect the actual assessed value of the proposed development and the applicable property tax rates, and cause the actual property tax liability to differ significantly from the estimates shown in these schedules.

(Subject to the attached letter dated March 27, 2018)  
(Preliminary - Subject to Change)  
(For Internal Use Only)

CITY OF HOBART, INDIANA

ITR America

**ESTIMATED ANNUAL COMBINED PROPERTY TAX ABATEMENT SAVINGS**

*Assumes 10-year property tax abatements*

Taxes Payable Year	Estimated Net Assessed Value of the Proposed Investment (1)		Estimated Property Tax Liability				Estimated Abatement Savings
	With Abatement	Without Abatement	Net Tax Rate (2)	Gross Taxes	With Proposed Abatement Circuit Breaker Tax Credit (3)	Without Proposed Abatement Circuit Breaker Tax Credit (3)	
2021	\$0	\$4,836,946	2.5918	\$0	\$0	\$0	\$125,370
2022	233,750	4,836,946	2.5918	6,060	0	6,060	125,370
2023	935,000	4,836,946	2.5918	24,230	0	24,230	125,370
2024	1,636,250	4,836,946	2.5918	42,410	0	42,410	125,370
2025	2,337,500	4,836,946	2.5918	60,580	0	60,580	125,370
2026	2,837,974	4,836,946	2.5918	73,550	0	73,550	125,370
2027	3,340,394	4,836,946	2.5918	86,580	0	86,580	125,370
2028	3,838,859	4,836,946	2.5918	99,490	0	99,490	125,370
2029	4,332,295	4,836,946	2.5918	112,280	0	112,280	125,370
2030	4,587,382	4,836,946	2.5918	118,900	0	118,900	125,370
<b>Totals</b>				<b>\$624,080</b>	<b>\$0</b>	<b>\$624,080</b>	<b>\$1,253,700</b>

(1) See pages 4 and 5.

(2) Represents the certified pay 2018 tax rate for the Hobart Corp.-Ross Twp. taxing district. Accounts for the application of the pay 2018 LIT PTRC of 13.001%.

(3) Assumes the Circuit Breaker Tax Credit, which limits property tax liability to 3% of gross assessed value for an industrial parcel, is applied.

(Subject to the attached letter dated March 27, 2018)  
(Preliminary - Subject to Change)  
(For Internal Use Only)

CITY OF HOBART, INDIANA

ITR America

**ESTIMATED PROPERTY TAX LIABILITY FOR THE PROPOSED INVESTMENT IN REAL PROPERTY**  
*Assumes a 10-year real property tax abatement*

Taxes Payable Year	Estimated Net Assessed Value of the Proposed Investment (1)		Net Tax Rate (3)	Estimated Property Tax Liability			Estimated Abatement Savings
	With Proposed Abatement (2)	Without Proposed Abatement		Gross Taxes	With Proposed Abatement Circuit Breaker Tax Credit (4)	Without Proposed Abatement Circuit Breaker Tax Credit (4)	
2021	\$0	\$4,675,000	\$2,5918	\$0	\$0	\$121,170	\$121,170
2022	233,750	4,675,000	2,5918	6,060	6,060	121,170	115,110
2023	935,000	4,675,000	2,5918	24,230	24,230	121,170	96,940
2024	1,636,250	4,675,000	2,5918	42,410	42,410	121,170	78,760
2025	2,337,500	4,675,000	2,5918	60,580	60,580	121,170	60,590
2026	2,805,000	4,675,000	2,5918	72,700	72,700	121,170	48,470
2027	3,272,500	4,675,000	2,5918	84,820	84,820	121,170	36,350
2028	3,740,000	4,675,000	2,5918	96,930	96,930	121,170	24,240
2029	4,207,500	4,675,000	2,5918	109,050	109,050	121,170	12,120
2030	4,441,250	4,675,000	2,5918	115,110	115,110	121,170	6,060
Totals				\$611,890	\$0	\$1,211,700	\$599,810

(1) Per the assessment estimate provided by the Company in its Statement of Benefits Real Estate Improvements. The actual assessed value will be determined by the Lake County Assessor upon completion, and the actual value may vary materially from the value assumed in this illustration.  
 (2) Assumes a 10-year real property tax abatement with the following deduction percentages: 100%, 95%, 80%, 65%, 50%, 40%, 30%, 20%, 10%, and 5%.  
 (3) Represents the certified pay 2018 tax rate for the Hobart Corp.-Ross Twp. taxing district. Accounts for the application of the pay 2018 LIT PTRC of 13.0001%.  
 (4) Assumes the Circuit Breaker Tax Credit, which limits property tax liability to 3% of gross assessed value for an industrial parcel, is applied.

(Subject to the attached letter dated March 27, 2018)  
 (Preliminary - Subject to Change)  
 (For Internal Use Only)

CITY OF HOBART, INDIANA  
ITR America

**ESTIMATED PROPERTY TAX LIABILITY FOR THE PROPOSED INVESTMENT IN PERSONAL PROPERTY**  
*Assumes a 10-year personal property tax abatement*

Taxes Payable Year	Estimated Net Assessed Value of the Proposed Investment (1)		Net Tax Rate (3)	Estimated Property Tax Liability			Without Proposed Abatement Circuit Breaker Tax Credit (4)	Net Taxes	Estimated Abatement Savings
	With Proposed Abatement (2)	Without Proposed Abatement		Gross Taxes	With Proposed Abatement Circuit Breaker Tax Credit (4)	Net Taxes			
2021	\$0	\$161,946	\$2,5918	\$0	\$0	\$4,200	\$0	\$4,200	\$4,200
2022	0	161,946	2,5918	0	0	4,200	0	4,200	4,200
2023	0	161,946	2,5918	0	0	4,200	0	4,200	4,200
2024	0	161,946	2,5918	0	0	4,200	0	4,200	4,200
2025	0	161,946	2,5918	0	0	4,200	0	4,200	4,200
2026	32,974	161,946	2,5918	850	0	4,200	0	4,200	3,350
2027	67,894	161,946	2,5918	1,760	0	4,200	0	4,200	2,440
2028	98,859	161,946	2,5918	2,560	0	4,200	0	4,200	1,640
2029	124,795	161,946	2,5918	3,230	0	4,200	0	4,200	970
2030	146,132	161,946	2,5918	3,790	0	4,200	0	4,200	410
<b>Totals</b>				\$12,190	\$0	\$42,000	\$0	\$42,000	\$29,810

(1) Represents the estimated net assessed value of the proposed personal property investment only. Accounts for the impact of the acquisition cost and depreciation status of the existing personal property on the estimated true tax value of the proposed investment.  
 (2) Assumes a 10-year personal property tax abatement with the following deduction percentages: 100%, 90%, 80%, 70%, 60%, 50%, 40%, 30%, 20%, and 10%.  
 (3) Represents the certified pay 2018 tax rate for the Hobart Corp.-Ross Twp. taxing district. Accounts for the application of the pay 2018 LIT PTRC of 13.001%.  
 (4) Assumes the Circuit Breaker Tax Credit, which limits property tax liability to 3% of gross assessed value for an industrial parcel, is applied.

(Subject to the attached letter dated March 27, 2018)  
(Preliminary - Subject to Change)  
(For Internal Use Only)