

COMMON COUNCIL OF THE CITY OF HOBART, INDIANA

RESOLUTION NO. 2019- 25

**A Resolution Approving the Amended and Restated 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, said Grants of tax abatements were later amended by the adoption of City Council Resolutions Numbers 2019-19 and 2019-20 on July 17, 2019 and August 21, 2019, respectively; and

WHEREAS, under its terms, Resolution No. 2018-08 became effective upon the execution and delivery of a written Development Agreement by and between the City and ITR; and such Development Agreement was approved by the Council on June 6, 2018; and

WHEREAS, pursuant to said Confirmatory Resolution of the Council (Resolution Number 2019-20) the City of Hobart and ITR America, LLC negotiated, approved and executed a Development Agreement governing the covenants, terms and conditions under which the project would be constructed, said Agreement being adopted by the Board of Public Works and Safety of the City (“Board”) by its Resolution Number 2018- 02 on June 6, 2018, and by the Council by its Resolution Number 2018-11 on June 6, 2018; and

WHEREAS, said Grants of tax abatements were later amended by the adoption of City Council Resolutions Numbers 2019-19 and 2019-20 on July 17, 2019 and August 21, 2019, respectively; and

WHEREAS, the parties have renegotiated the prior Development Agreement and have agreed upon an Amended and Restated Development Agreement which is attached hereto and made a part hereof, said new Agreement to replace and supersede the prior Development Agreement; 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 an Amended and Restated Development Agreement by and between the City and ITR which was thereupon duly executed;

and

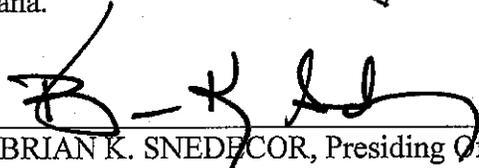
WHEREAS, the Council now desires to waive the application of the City's Responsible Bidding Practices Ordinances and approve said Executed Amended and Restated Development Agreement, thereby allowing it to become effective and in force.

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

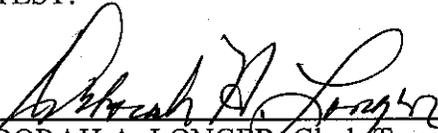
1. The application of the City of Hobart Responsible Bidding Practices Ordinance, as amended, to the above-described project of ITR America, LLC is hereby waived in all respects.

2. The Amended and Restated 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 21st day of August, 2019 by the Common Council of the City of Hobart, Indiana.


BRIAN K. SNEDECOR, Presiding Officer

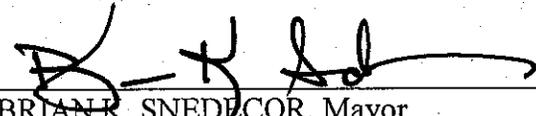
ATTEST:


DEBORAH A. LONGER, Clerk-Treasurer

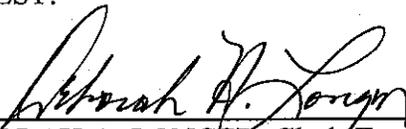
PRESENTED by me to the Mayor of the City of Hobart on the 21st day of August, 2019, at 7:15 a.m./p.m.


DEBORAH A. LONGER, Clerk-Treasurer

APPROVED, SIGNED AND RETURNED by me to the Common Council of the City of Hobart, on this 21st day of August, 2019.


BRIAN K. SNEDECOR, Mayor

ATTEST:


DEBORAH A. LONGER, Clerk-Treasurer

AMENDED AND RESTATED DEVELOPMENT AGREEMENT

by and between

THE CITY OF HOBART, INDIANA,

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

and

**ITR AMERICA, LLC,
A Mississippi Limited Liability Company
admitted to do business in Indiana**

August __, 2019

TABLE OF CONTENTS

Section	Title	Page
	Recitals	4
1.	Duties of the Company	5
2.	Duties of the City	7
3.	Additional Covenants and Representations of the Company . . .	8
	a. Employment	8
	b. Local Sub-Contractors	9
	c. Union Labor	9
	d. Tax Payments and Appeals	9
	(i) Real Estate Property Tax Appeals	9
	(ii) Personal Property Tax Appeals	10
	(iii) Notice and Copy of Appeals & Related Documents	11
	(iv) Compliance Review Fee for Personal Property . . .	11
	(v) Representations & Agreements Incorporated	11
	e. Other Representations of the Company	12
4.	Return of Benefits	12
	a. Events Requiring Reimbursement and Repayment	13
	b. Amount of Reimbursement and Repayment	13
	c. Termination of Section 4	13
5.	Reporting Obligations During Construction	13
6.	Material Consideration	14
7.	Mutual Assistance	14
8.	Cooperation	14
9.	Enforcement and Attorney Fees	14

10. No Agency, Joint Venture or Partnership	14
11. Conflict of Interest; Representatives not Individually Liable	14
12. Future Acts and Good Faith	15
13. Waiver of Jury Trial	15
14. Severability	15
15. No Other Agreement	16
16. Counterparts	16
17. Notices and Demands	16
18. Governing Law	17
19. Authority	17
20. No Third-Party Beneficiaries	17
21. Assignment	17
22. Amendments	17
23. Default	17
24. Prior Development Agreement Superseded	18

SCHEDULE OF EXHIBITS

Exhibit A: Analysis by Baker Tilly Municipal Advisors, LLC, Dated March 27, 2018	21
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DEVELOPMENT AGREEMENT

THIS AGREEMENT is made and entered into on the _____ day of August, 2019 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” or “ITR”), 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 made application to the City in 2018 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 North Wind 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 occupies a site of approximately 8.095 acres in North Wind Crossings, a Class A industrial park, very near the interchange of I-65 and 61st Avenue in the City. In connection with the construction of the facility, ITR engaged the services of Becknell Industrial, the developer and operator of North Wind Crossings, and 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 reached agreement upon the promises, terms and conditions upon which the City was to grant such abatements to the Company, which abatements

are important to ITR in assuring the financial viability of the project and its subsequent profitability. The City duly granted said real and personal property abatements through the adoption by the Common Council of the City of Resolution Nos. 2018-07 and 2018-08, the latter adopted upon May 2, 2018; and

WHEREAS, ITR, the City of Hobart and its Board of Public Works and Safety approved and executed a Development Agreement (“DA”) stating the covenants, terms and conditions under which ITR would receive the City’s economic incentive through real and personal property tax abatement, and ITR would deliver the promised benefits of the project, said DA being adopted and approved by action of the Common Council of the City through its Resolution No. 2018-11 on June 6, 2018 and by the Board of Public Works and Safety on the same date through the Board’s Resolution Number 2018-02; and

WHEREAS, said Development Agreement was dated June 6, 2018 and was recorded in the Office of Lake County Recorder on June 13, 2018 as document number 2018 0369664; and

WHEREAS, ITR informed the City in early 2019 that, because ITR was able to purchase some equipment items at favorable prices earlier than previously anticipated, it was able to take possession and place them in its new building earlier than anticipated. ITR requested that the date for commencement of the personal property tax abatement it had already been granted be changed to an earlier date. In addition, ITR also requested that abatement be approved for additional equipment items that the company had decided to acquire; and

WHEREAS, the Common Council adopted its Resolution Number 2019-09 which amended the declaratory resolution on July 17, 2019 (Resolution 2018-07) which proposed the grant of the real and personal property abatement, but only as to the personal property tax abatement, and later held public hearing and adopted a new Confirmatory Resolution Number 2019-20) amending Resolution Number 2018-08 on August 21, 2019; and

WHEREAS, the grant of the amendments to the personal property tax abatement granted to ITR require that the DA adopted in 2018 be amended and restated, and the parties now wish to document their agreements in this instrument which is intended to cancel and replace the DA adopted in 2018.

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 of and close the transfer of title to the above described real estate;
- b. Cause the construction and operation of its proposed new facility in Hobart, Indiana in substantial and material conformance to the written

applications, Statements of Benefit forms, plans and specifications submitted to and approved by the City;

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

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

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

f. 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;

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

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

i. 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;

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

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

l. Comply with all provisions of this Agreement.

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

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

Real Property:

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

Deduction Period: Ten Years

Deduction Schedule:	Year One	100%
	Year Two	95%
	Year Three	80%
	Year Four	65%
	Year Five	50%
	Year Six	40%
	Year Seven	30%
	Year Eight	20%
	Year Nine	10%
	Year Ten	5%

Personal Property

Total Estimated Amount of Equipment to be Purchased: \$ 829,764.00

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%

b. Provide assistance, advice, and guidance to ITR 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 time in consulting with others.

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

The Company understands that:

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

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

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

a. Employment

The Company represents and agrees that the new facility will result in the creation and addition of not less than eight (8) additional full-time jobs during the period of the tax abatement incentives to be granted by the City pursuant to this Agreement, and that the total payroll of said new jobs shall not be less than \$409,500.00 annually during such period. For purposes of this Agreement, "full-time" describes any employee working at least forty (40) hours per week.

Employees of the Company and any other entity working exclusively or primarily at the new facility (e.g., trucking, logistics, technology, janitorial, maintenance) will be included as “employees” for the purpose of this Section and this Agreement. The Company has determined that the new facility will result in approximately 55 retained construction jobs, the total payroll for such construction personnel being not less than \$2.2 million during the period of the construction of the new facility which is estimated to be completed by January 31, 2019. This is an estimated figure based on forty percent (40%) of the total cost of construction. Compliance with the above construction payroll shall be determined solely by the actual total construction cost and payroll at the conclusion of construction, irrespective of the actual number of retained jobs achieved.

b. Local Sub-Contractors

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

c. Union Labor

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

d. Tax Payments and Appeals

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

(i) *Real Estate Property Tax Appeals:* The Company agrees to refrain from filing or otherwise pursuing any real property tax appeal regarding the new facility for any year in which the real property tax abatement granted under this Agreement is in effect, and which would have the effect of reducing the net real estate property taxes payable for the new facility for that year stated in the following table, provided that, the assessed value of the real property improvements for the new facility reaches \$ 4,675,000.00. In the event that the assessed value of the real property of the new facility is less than \$ 4,675,000.00, the amount indicated in the table below for that year will be reduced by the percentage by which the actual valuation is less than \$ 4,675,000.00, so that the net taxes to be paid under this no appeal agreement, is reduced proportionately:

Taxes Payable Year

Property Taxes to be Paid on the
Proposed Real Property Investment
(per the March 27, 2018 Analysis by
H.J. Umbaugh & Company Certified

Public Accountants, LLP attached as Exhibit “A”)

2021	\$ 0
2022	6,060.00
2023	24,230.00
2024	42,410.00
2025	60,580.00
2026	72,700.00
2027	84,820.00
2028	96,930.00
2029	109,050.00
2030	115,110.00

(ii) *Personal Property Tax Appeals:* The Company agrees to refrain from materially reducing the reported acquisition cost, acquisition year or depreciation pool (currently assumed to be Pool Nos. 2 or 3 as per the Baker Tilly analysis of April 9, 2019 attached as Exhibit “A” to this Agreement) for the new 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 new manufacturing equipment for that year as stated in the following table below, provided that the acquisition cost of the personal property is greater than or equal to \$829,764.00. In the event that the acquisition cost of the proposed personal property investment is less than \$829,764.00, the amount indicated in the table below for that year will be reduced accordingly, so that the net taxes to be paid under this Agreement is reduced.

Taxes Payable Year Property Taxes to be paid on the Proposed Personal Property Investment (per the April 9, 2019 Analysis by Baker Tilly Municipal Advisors, LLC attached as Exhibit “A”)

2020	\$ 0
2021	530.00
2022	1,670.00
2023	0
2024	0
2025	700.00
2026	2,050.00
2027	3,240.00
2028	4,310.00
2029	5,220.00
2030	5,960.00

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

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

e. Other Representations of the Company.

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

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

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

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

(iv) No litigation or proceeding in any court or before any other governmental authority or other person or entity is currently pending or, to the 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 new facility on the site described above subject to and in accordance with the terms and conditions of this Agreement.

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

4. Return of Benefits. Upon the grant of the real and personal property tax deductions 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 real estate and 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 repay and

reimburse the City for such taxes saved upon the occurrence of any one or more than one of the events stated below in Sub-Section (a):

a. Events Requiring Reimbursement and Repayment.

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

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

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

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

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

c. Termination of Section 4.

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

5. Reporting Obligations during Construction.

a. Upon substantial completion of the Project, the Company agrees to report or cause to be reported to the City, the total number of local contractors or sub-contractors (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.

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

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, 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.

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

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

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

Company: Chris Gilleo
Chief Financial Officer
6301 Northwind Parkway
Hobart, Indiana 46342

With a copy to:

Brett Clemens
President
6301 Northwind Pkwy
Hobart IN 46342

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

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

With copies to:

Denarie Kane
Director of Development,
City of Hobart
414 Main Street
Hobart, IN 46342

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

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.

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. Prior Development Agreement Superseded. The Development Agreement between ITR and the City parties dated June 6, 2018 and recorded in the Office of the Recorder of Lake County, Indiana on June 13, 2018 as document number 2018 036964 is hereby replaced and superseded by this Agreement. In the event of any conflict between this Agreement and the prior Agreement, this Agreement shall control. This Agreement shall be applied and interpreted as if it had been in effect at all times from and after June 6, 2018.

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

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

By: _____
CHRISTOPHER GILLES,
Chief Financial Officer

CITY OF HOBART, INDIANA (“CITY”)

By: _____
BRIAN K. SNEDECOR, Mayor

ADOPTED and APPROVED by the Board of Public Works and Safety of the City of Hobart on this 21st day of August, 2019.

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

BRIAN K. SNEDECOR, Presiding Officer

THOMAS EHRHARDT, Member

RICH LAIN, Member

ATTEST: _____
DEBORAH A. LONGER, Clerk-Treasurer

STATE OF INDIANA)
) ss:
LAKE COUNTY)

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

IN WITNESS WHEREOF, I have affixed my signature and official seal on this _____ day of August, 2019.

Notary Public

Name Printed: _____

S E A L

County of Residence: _____

My Commission Expires: _____

STATE OF INDIANA)
) ss:
LAKE COUNTY)

BEFORE ME, a duly appointed Notary Public in and for said county and state, appeared BRIAN K. SNEDECOR and DEBORAH A. LONGER, Mayor-Presiding Officer of the City of Hobart Board of Public Works and Safety and 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 August, 2019.

Notary Public

Name Printed: _____

S E A L

County of Residence: _____

My Commission Expires: _____

STATE OF INDIANA)
) ss:
LAKE COUNTY)

BEFORE ME, a duly appointed Notary Public in and for said county and state, appeared THOMAS EHRHARDT 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 August, 2019.

Notary Public

Name Printed: _____

S E A L

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. Anthony DeBonis, Jr.

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

EXHIBIT "A"



now joined with
Springsted and Umbaugh

Baker Tilly Municipal Advisors, LLC
8365 Keystone Crossing, Ste 300
Indianapolis, IN 46240
United States of America

T: +1 (317) 465 1500
F: +1 (317) 465 1550
bakertilly.com

April 9, 2019

Ms. Denarie Kane, Director of Development
City of Hobart
414 Main Street
Hobart, Indiana 46324

Re: Proposed Property Tax Abatement Estimated Savings Calculation – ITR America, LLC

Dear Denarie:

The attached schedules (listed below) present unaudited and limited information for the purpose of discussion and consideration in the preliminary planning stage of the proposed property tax abatement by the appropriate officers, officials and advisors of the City of Hobart. The use of these schedules should be restricted to this purpose, for internal use only, as the information is subject to future revision and final report.

<u>Page</u>	
2	Assumptions
3	Estimated Annual Combined Property Tax Abatement Savings
4	Estimated Property Tax Liability for the Proposed Investment in Real Property
5	Estimated Property Tax Liability for the Proposed Investment in Personal Property

We would appreciate your questions or comments on this information and would provide additional information upon request.

Very truly yours,

BAKER TILLY MUNICIPAL ADVISORS, LLC

Matthew R. Eckerle, Director

CITY OF HOBART, INDIANA

ITR America, LLC

ASSUMPTIONS

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

	<u>Estimated Cost</u>
Real Property:	
New Building Construction (1)	
- First assessed January 1, 2020 for taxes payable in 2021	\$5,500,000
Depreciable Personal Property:	
Existing Facility (2)	
- January 1, 2019 assessment taxes payable 2020	1,838,138
Proposed Investment (1)	
Pool #2 (3)	
- First assessed January 1, 2019 for taxes payable in 2020	\$41,516
- First assessed January 1, 2020 for taxes payable in 2021	67,000
Pool #3 (3)	
- First assessed January 1, 2019 for taxes payable in 2020	308,428
- First assessed January 1, 2020 for taxes payable in 2021	412,820
Subtotal	<u>829,764</u>
Total Investment	<u><u>\$8,167,902</u></u>

- (1) Per investment information provided by ITR America LLC.
- (2) Per the Indiana Business Tangible Personal Property Assessment Return completed by ITR America, LLC for January 1, 2019 taxes payable 2020.
- (3) 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.

Property Tax Rates	
Certified Pay 2019 Tax Rate	
- Hobart Corp.-Ross Twp. Taxing district	\$2.9522

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 April 9, 2019)
(Preliminary - Subject to Change)
(For Internal Use Only)

CITY OF HOBART, INDIANA

ITR America, LLC

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 Proposed Abatement	Without Proposed Abatement	With Proposed Abatement	Without Proposed Abatement	
			Gross Taxes	Gross Taxes	
			Net Tax Rate (2)	Net Taxes	Net Taxes
				(3)	(3)
2020	\$0	\$139,977	2.5382	\$0	\$3,550
2021	20,831	5,075,234	2.5382	530	128,820
2022	299,685	5,147,284	2.5382	7,600	130,650
2023	935,000	4,923,929	2.5382	23,730	124,980
2024	1,636,250	4,923,929	2.5382	41,530	124,980
2025	2,365,069	4,923,929	2.5382	60,030	124,980
2026	2,885,768	4,923,929	2.5382	73,250	124,980
2027	3,400,090	4,923,929	2.5382	86,300	124,980
2028	3,909,612	4,923,929	2.5382	99,240	124,980
2029	4,413,144	4,923,929	2.5382	112,010	124,980
2030	4,676,098	4,923,929	2.5382	118,690	124,980
Totals				\$622,910	\$1,262,860
				\$0	\$0
					\$639,950

(1) See pages 4 and 5.

(2) Represents the certified pay 2019 tax rate for the Hobart Corp-Ross Twp. taxing district. Accounts for the application of the pay 2019 LIT PTRC of 14.0238%.

(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 April 9, 2019)
(Preliminary - Subject to Change)
(For Internal Use Only)

CITY OF HOBART, INDIANA

ITR America, LLC

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		Without Proposed Abatement Circuit Breaker Tax Credit (4)	Net Taxes	Estimated Abatement Savings
	With Proposed Abatement	Without Proposed Abatement		Gross Taxes	Net Taxes			
2021	\$0	\$4,675,000	\$2,5382	\$0	\$0	\$0	\$118,660	\$118,660
2022	233,750	4,675,000	2,5382	5,930	5,930	0	118,660	112,730
2023	935,000	4,675,000	2,5382	23,730	23,730	0	118,660	94,930
2024	1,636,250	4,675,000	2,5382	41,530	41,530	0	118,660	77,130
2025	2,337,500	4,675,000	2,5382	59,330	59,330	0	118,660	59,330
2026	2,805,000	4,675,000	2,5382	71,200	71,200	0	118,660	47,460
2027	3,272,500	4,675,000	2,5382	83,060	83,060	0	118,660	35,600
2028	3,740,000	4,675,000	2,5382	94,930	94,930	0	118,660	23,730
2029	4,207,500	4,675,000	2,5382	106,790	106,790	0	118,660	11,870
2030	4,441,250	4,675,000	2,5382	112,730	112,730	0	118,660	5,930
Totals				\$599,230	\$599,230	\$0	\$1,186,600	\$587,370

(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 2019 tax rate for the Hobart Corp.-Ross Twp. taxing district. Accounts for the application of the pay 2019 LIT PTRC of 14.0238%.
 (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 April 9, 2019)
 (Preliminary - Subject to Change)
 (For Internal Use Only)

CITY OF HOBART, INDIANA

IIR America, LLC

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	Without Proposed Abatement		Gross Taxes	Net Taxes			
2020	\$0	\$139,977	2.5382	\$0	\$0	\$0	\$3,550	\$3,550
2021	20,831	400,234	2.5382	530	530	0	10,160	9,630
2022	65,935	472,284	2.5382	1,670	1,670	0	11,990	10,320
2023	0	248,929	2.5382	0	0	0	6,320	6,320
2024	0	248,929	2.5382	0	0	0	6,320	6,320
2025	27,569	248,929	2.5382	700	700	0	6,320	5,620
2026	80,768	248,929	2.5382	2,050	2,050	0	6,320	4,270
2027	127,590	248,929	2.5382	3,240	3,240	0	6,320	3,080
2028	169,612	248,929	2.5382	4,310	4,310	0	6,320	2,010
2029	205,644	248,929	2.5382	5,220	5,220	0	6,320	1,100
2030	234,848	248,929	2.5382	5,960	5,960	0	6,320	360
Totals				\$23,680	\$0	\$0	\$76,260	\$52,580

- (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 2019 tax rate for the Hobart Corp.-Ross Twp. taxing district. Accounts for the application of the pay 2019 LIT PTRC of 14.0238%.
- (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 April 9, 2019)
(Preliminary - Subject to Change)
(For Internal Use Only)