



BOARD OF COMMISSIONERS LAPORTE COUNTY

555 Michigan Avenue, Suite 202
LaPorte, IN 46350
Phone: (219) 326-6808 ext. 2229 - FAX: (219) 326-9103

Ken Layton
President
Barbara Huston
Vice President
Willie Milsap
Member

LAPORTE COUNTY COMMISSIONERS

SPECIAL MEETING

Tuesday, October 9, 2012

The LaPorte County Board of Commissioners met in a special meeting on Tuesday, October 9, 2012, at 5:00 p.m. in the LaPorte County Complex Meeting Room #2.

CALL MEETING TO ORDER

Mr. Layton, President, called the meeting to order at 5:00 p.m.

PLEDGE OF ALLEGIANCE

Mrs. Barbara Huston led the Pledge of Allegiance.

ROLL CALL

All Present

Phil Faccenda, Attorney, Barnes & Thornburg, South Bend, Indiana/Presentation on Agreement for KID

Mr. Faccenda, the resolution before the county commissioners deals with an amendment to the development agreement that was entered into in June, 2011, with regard to the rail spur project at the Kingsbury Industrial Park. The reason for the amendment is that there were deadlines and dates set forth in the original agreement whereby there were deadlines that needed to be met within a certain period of time. There was a delay in the project that mostly is a result of a delay in receiving an Army easement that is necessary for the rail line. That approval has been recently acquired and allowed the project to move forward. The resolution before you is a simple resolution adopting a first amendment to the original agreement essentially bringing forward the dates setting now October 30, 2012 as the date by which all matters have to be concluded with the developer. Documents have been signed by the developer. Some documents are being signed today. Documents still need to be publicly recorded, title policies have to be finalized and that is the reason for the October 30th date. Other than that, in essence, a closing will occur this month.

Mr. Milsap, all the legal documents necessary for this project have been granted and ready to go?

Mr. Faccenda, almost complete. The final title policy needs to be issued. We have not yet received the final title policy but anticipate receiving that very shortly.

Mr. Milsap, is there a reason why you haven't received it?

Mr. Faccenda, the only reason is that they had to finalize the legal descriptions and insure that the deeds were proper. A form of the title policy is already in agreement between the parties. It just needs to be issued. The title company will not provide that until they have seen everyone has signed off on all the closing documents. They need to see the county's signatures and the developers signatures on the various closing documents and then they will issue the policy.

Mr. Layton, do we need to read the entire resolution or just by title only?

Mr. Faccenda, you can read it by title only.

Mrs. Huston, Resolution Of The Board Of Commissioners Of LaPorte County, Indiana Relating To The Financing Of An Economic Development Project. (Please see attached)

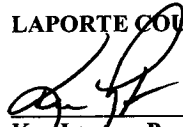
Mr. Milsap made a motion to approve, seconded by Mrs. Huston, motion carried by voice vote 3-0.

Resolution #2012-06.

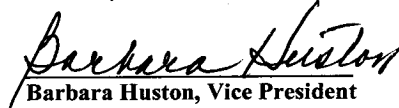
ADJOURN

Mr. Layton, President, adjourned the meeting at 5:09 p.m.

LAPORTE COUNTY BOARD OF COMMISSIONERS



Ken Layton, President



Barbara Huston, Vice President



Willie Milsap, Member

ATTEST:



Craig Hinchman, LaPorte
County Auditor

RESOLUTION NO. 2012-06

**RESOLUTION OF THE BOARD OF COMMISSIONERS OF LAPORTE
COUNTY, INDIANA RELATING TO THE FINANCING OF AN ECONOMIC
DEVELOPMENT PROJECT**

WHEREAS, LaPorte County (the "County") is authorized to make loans to provide funding for economic development projects and facilities pursuant to Indiana Code 8-14-16 and 36-7-12; and

WHEREAS, the Board of Commissioners of LaPorte County, Indiana (the "County Commissioners"), pursuant to Resolution 2011-02 of the County Commissioners adopted on March 25, 2011 and Resolution 2011-03 of the County Commissioners adopted on June 21, 2011 (the "Prior Resolutions"), authorized the County to make a loan funded from monies in the LaPorte County Major Moves Construction Fund to complete a railway line extension that will connect a CSX main railway line to an industrial area within the Kingsbury Industrial Park Economic Development Area in the County (the "Rail Spur Project"); and

WHEREAS, pursuant to the Prior Resolutions, the County and LaPorte County Redevelopment Commission (the "Commission") entered into that certain Development and Financing Agreement (the "Original Agreement"), dated June 30, 2011, with ILPK, LLC ("ILPK") and ILPK Property Owners Association, Inc. (the "Borrower");

WHEREAS, ILPK and the Borrower have requested that County and the Commission enter into a First Amendment to the Development and Financing Agreement (the "Amendment") substantially in the form of Exhibit A hereto to modify terms and conditions in the Original Agreement;

WHEREAS, the County Commissioners desire to enter into the Amendment to facilitate the acquisition, construction, installation and equipping of the Rail Spur Project which will provide opportunities for gainful employment and the creation of business opportunities in the County, and will be of benefit to the health, safety, and general welfare of the citizens of the County; and

WHEREAS, this Resolution shall modify and amend the Prior Resolutions.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF
LAPORTE COUNTY, INDIANA AS FOLLOWS:**

1. The recitals contained in this Resolution are true and correct and are incorporated in this Resolution by this reference.

2. The acquisition, construction, installation and equipping of the Rail Spur Project and the use thereof, and the proposed financing of the Rail Spur Project as described in the Original Agreement, as modified by the Amendment presented to this meeting, will provide opportunities for gainful employment and the creation of business opportunities in the County, and will be of benefit to the health, safety, and general welfare of the citizens of the County, and

such citizens will be benefitted by the acquisition, construction, installation and equipping of the Rail Spur Project.

3. The County Commissioners hereby approve the Amendment. The County Commissioners and the County Auditor are hereby authorized and directed to execute and deliver the Amendment without further approval of the County Commissioners in substantially the form herein approved with such additions, deletions and modifications thereto as may be approved by the County Commissioners, the execution thereof being conclusive evidence of such approval; and the County Auditor, or any authorized representative of the County Auditor, is hereby authorized to affix the seal of the County to such documents and to attest the same.

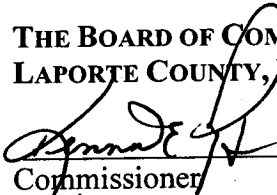
4. The County Commissioners hereby authorize the President of the County Commissioners, in consultation with the County Commissioners' legal counsel, Barnes & Thornburg LLP, to negotiate final terms of the Amendment and the related documents.

5. This Resolution shall modify and amend the Prior Resolutions.

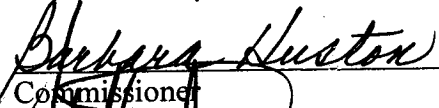
6. This Resolution shall be in full force and effect immediately upon adoption.

Passed and adopted by the Board of Commissioners of LaPorte County, Indiana, on the 9th day of October, 2012.

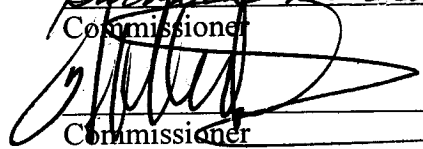
**THE BOARD OF COMMISSIONERS OF
LAPORTE COUNTY, INDIANA**



Commissioner

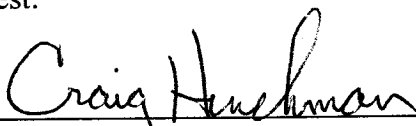


Commissioner



Commissioner

Attest:



LaPorte County, Auditor

EXHIBIT A

[Follows on the Next Page]

FIRST AMENDMENT TO DEVELOPMENT AND FINANCING AGREEMENT

THIS FIRST AMENDMENT TO DEVELOPMENT AND FINANCING AGREEMENT ("Amendment"), made on October 9, 2012, is by and among (i) LaPorte County, Indiana (the "County"), (ii) the LaPorte County Redevelopment Commission (the "Redevelopment Commission"), governing body of the LaPorte County Redevelopment District (the "District"), (iii) ILPK, LLC, an Indiana limited liability company ("Owner"), and (iv) ILPK Property Owners Association, Inc., an Indiana nonprofit corporation (the "Association") (each sometimes being referred to herein as a "Party" or collectively as the "Parties").

RECITALS

WHEREAS, the Parties are parties to that certain Development and Financing Agreement, dated on June 30, 2011 (the "Agreement"), and the Parties desire to enter into this Amendment to modify terms and conditions in the Agreement; and

WHEREAS, all capitalized terms that are defined in the Agreement and are not defined in this Amendment, shall have the meanings ascribed to them in the Agreement:

NOW, THEREFORE, in consideration of the mutual promises and obligations set forth herein, the adequacy of which consideration is hereby acknowledged, the Parties agree as follows:

1. **Recitals.** The recitals contained in this Amendment are true and correct and are incorporated in this Amendment by this reference.

2. **Conditions to Association Payments from Escrowed Funds.**

(a) Section 4(a)(i) of the Agreement is hereby amended to read, in its entirety, as follows:

"(i) an unconditional guarantee from the Owner to the County of all sums owed and/or owing by the Association pursuant to the Note, this Agreement and under the Loan when the same are due and payable in the form of the guarantee set forth on Exhibit H to this Agreement (the "Owner Guarantee"), which Owner Guarantee shall be secured by a Mortgage and Security Agreement from the Owner to the County in the form of Exhibit I to this Agreement (the "Owner Parcel Mortgage") granting the County a first mortgage lien against the Owner Parcel and the real property over which the rail spur will be constructed from the CSX (and any successor) main railway line to Hupp Road;"

(b) The first sentence of Section 5(a) of the Agreement is hereby amended to read, in its entirety, as follows:

"Prior to the disbursement of any Escrowed Funds to the Association or to third parties designated by the Association pursuant to Section 3(d) hereof, and in any event not later than October 30, 2012, the Association and/or the Owner, as applicable shall deliver to the County:"

(c) The first sentence of Section 5(a)(7) of the Agreement is hereby amended to read, in its entirety, as follows:

“(7) evidence that the Association has perpetual, unobstructed access on property from Hupp Road to the CSX (and any successor) main railway line and the absolute right to construct the Rail Spur Project across such property including, but not limited to (A) certified copies of the necessary recorded deeds and easements (the “Rail Spur Real Estate Title Documents”); (B) agreement(s) in form and substance reasonably satisfactory to the County describing that portion of the Rail Spur Project to be undertaken by CSX (the “CSX Project”) and demonstrating that CSX has approved the CSX Project and has obtained the necessary funding for the CSX Project and will construct the CSX Project within the same time frame contemplated for the balance of the Rail Spur Project to be undertaken by the Association;”

(d) The County hereby acknowledges that it has received the items to be delivered pursuant to Section 5(a)(5), 5(a)(6) and 5(a)(8) of the Agreement, and that the County will have received the other items to be delivered pursuant to Section 5(a) of the Agreement when the County receives the following items from the Association and/or the Owner not later than October 30, 2012:

(1) counterparts of this Amendment, the Note, the Owner Parcel Mortgage, the Owner Guarantee, and the Halfwassen Guarantee duly executed by the Association or Owner or Halfwassen, as applicable, together with evidence, reasonably satisfactory to the County, that the person or persons executing each of such documents is duly authorized to execute them;

(2) evidence that each of the Owner, the Association and Halfwassen is validly existing and authorized to transact business in the State of Indiana;

(3) an owner’s title insurance policy, in the amount of \$6 million, reasonably acceptable to the County evidencing that the Association has perpetual easements and/or fee title over all lands over which the rail spur from the CSX (and any successor) main railway line to Hupp Road as described on **Exhibit G** of the Agreement;

(4) the favorable written opinion of legal counsel to each of the Owner, the Association and Halfwassen in form and substance reasonably satisfactory to the County, the Redevelopment Commission and their counsel; and

(5) a mortgagee’s title insurance policy, in the amount of \$6 million, pertaining to the Owner Parcel Mortgage in favor of the County, together with an access endorsement over the rail spur from the CSX (and any successor) main railway line to Hupp Road as described on **Exhibit G** of the Agreement and the additional title insurance endorsements listed on **Exhibit L** of the Agreement, insuring the County of the validity and first priority of the liens upon the

properties which are described in the Owner Parcel Mortgage, subject only to matters approved by the County.

3. **Commencement and Completion of the Rail Spur Project.** Section 7 of the Agreement is hereby amended to read, in its entirety, as follows:

“The Association shall: (i) commence construction of the Rail Spur Project by putting it out for bid on or about October 31, 2012; (ii) diligently complete the Rail Spur Project; and (iii) in any event, complete the Railway Project not later than November 30, 2013.

4. **Titles of Articles and Sections.** Any titles of the several parts, sections, and paragraphs of this Amendment are inserted for convenience or reference only and shall be disregarded in construing or interpreting any of its provisions.

5. **Counterparts.** This Amendment may be executed in counterparts, all of which shall be deemed originals.


6. **Governing Law.** This Amendment shall be interpreted and enforced according to the laws of the State of Indiana.

[SIGNATURES FOLLOW ON THE NEXT PAGE]

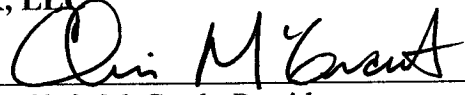
FIRST AMENDMENT TO DEVELOPMENT AND FINANCING AGREEMENT

IN WITNESS WHEREOF, the Parties hereby execute this Amendment on the date first written above.

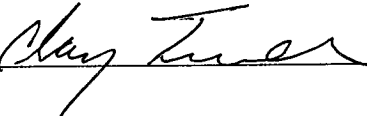
**ILPK PROPERTY OWNERS ASSOCIATION,
INC.**

By: 
Brent Halfwassen, Secretary

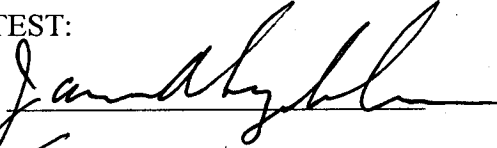
ILPK, LLC

By: 
Chris McGrath, President

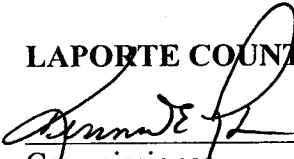
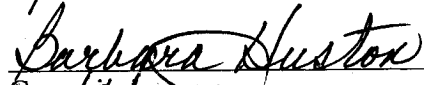
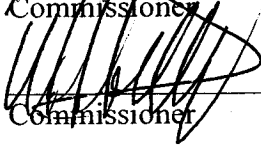
**LAPORTE COUNTY
REDEVELOPMENT COMMISSION**

By: 
Its: _____

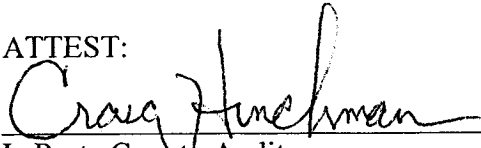
ATTEST:

By: 
Its: SECRETARY

LAPORTE COUNTY, INDIANA


Commissioner

Commissioner

Commissioner

ATTEST:


LaPorte County Auditor

October 9, 2012

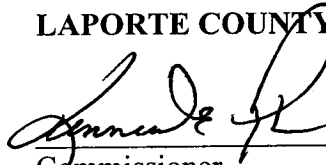
U.S. Bank National Association, as Escrow Agent
10 West Market Street, Suite 1150
Indianapolis, Indiana 46204
Attention: Corporate Trust Services

Re: Delivery of Escrowed Funds

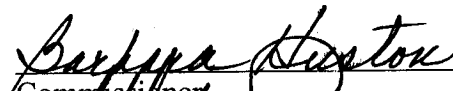
Ladies and Gentlemen:

In accordance with that certain Escrow Agreement, dated June 30, 2011, among LaPorte County, Indiana (the "County"), the LaPorte County Redevelopment Commission (the "Redevelopment Commission"), ILPK Property Owners Association, Inc. and U.S. Bank National Association, as Escrow Agent (the "Escrow Agent"), as amended by that certain First Amendment to Escrow Agreement, dated October 9, 2012 (such agreement, as amended, the "Escrow Agreement"), the County has caused the sum of Five Million Seven Hundred Thousand Dollars (\$5,700,000) (the "Net Deposit"), representing the Six Million Dollars (\$6,000,000) to be deposited with the Escrow Agent pursuant to the Escrow Agreement, less the sum of Three Hundred Thousand Dollars (\$300,000) retained by the County to pay costs the County and the Redevelopment Commission incur or have incurred in making and administering the Loan. The County hereby directs the Escrow Agent to deposit the Net Deposit, in the amount of \$5,700,000, into the Construction Cost Account, to be disbursed in accordance with the Escrow Agreement. Capitalized items not otherwise defined herein shall have the meaning given them in the Escrow Agreement.

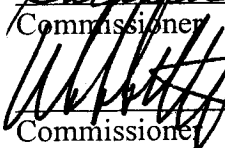
LAPORTE COUNTY, INDIANA



Commissioner



Commissioner



Commissioner

ATTEST:



LaPorte County Auditor

[Acknowledgments Follow on the Next Page]

U.S. Bank National Association, as Escrow Agent
Attention: Corporate Trust Services
October 9, 2012
Page 2

ACKNOWLEDGMENT OF THE TRUSTEE

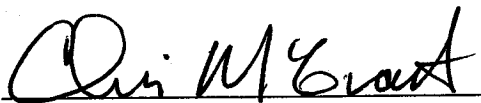
The Escrow Agent hereby acknowledges receipt from the County of the sum of Five Million Seven Hundred Thousand Dollars (\$5,700,000) and confirms that it has deposited or will deposit such amount into the Construction Cost Account to be disbursed in accordance with the Escrow Agreement.

**U.S. BANK NATIONAL ASSOCIATION, as
Escrow Agent**

By: 
T. Scott Fesler, Vice President

SEEN AND AGREED TO:

ILPK PROPERTY OWNERS ASSOCIATION, INC.

By: 
Chris McGrath, President