

RESOLUTION NO. 10-2016

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF VALPARAISO, INDIANA, APPROVING A LEASE OF A SHELL BUILDING BY THE VALPARAISO REDEVELOPMENT COMMISSION FROM VALPARAISO ECONOMIC DEVELOPMENT CORPORATION, AND RELATED MATTERS

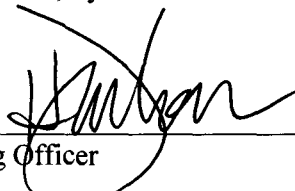
WHEREAS, the Valparaiso Redevelopment Commission (the "Redevelopment Commission") proposes to enter into a lease (the "Lease"), substantially in the form of Exhibit A attached hereto, of a shell building from Valparaiso Economic Development Corporation; and

WHEREAS, pursuant to the Lease, the Redevelopment Commission would make lease payments solely from tax increment revenues from the Consolidated Valparaiso Allocation Area (the "TIF Revenues");

NOW THEREFORE, BE IT RESOLVED BY THE CITY OF VALPARAISO COMMON COUNCIL AS FOLLOWS:

1. The Common Council hereby approves the Lease in substantially the form set forth in Exhibit A.
2. The pledge by the Redevelopment Commission of the TIF Revenues to the payment of lease payments under the Lease is hereby approved.
3. This Resolution shall be in full force and effect from and after its passage by the Common Council as required by law.

DULY PASSED on this 9th day of May, 2016, by the Common Council of the City of Valparaiso, Indiana.



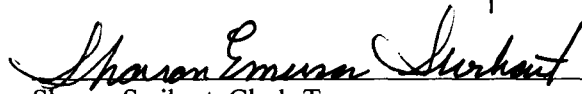
Presiding Officer

ATTEST:



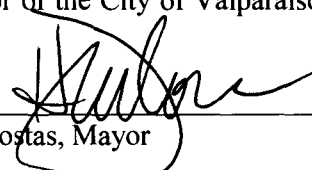
Sharon Swihart, Clerk-Treasurer

This resolution presented by me, the Clerk-Treasurer of the City of Valparaiso, Indiana, to the Mayor for his approval this 9th day of May, 2016.



Sharon Swihart, Clerk-Treasurer

This resolution signed and approved by me, the Mayor of the City of Valparaiso, Indiana, this 9th day of May, 2016.



Jon Costas, Mayor

DMS 3900123v1

6 Ayes - 1 abstain (Cotton)

Sharon Swihart

From: Patrick Lyp
Sent: Tuesday, May 10, 2016 1:39 PM
To: Sharon Swihart
Subject: RE: Resolution 10
Attachments: Valparaiso Garmong Lease - Valparaiso Garmong Lease.pdf; Tax Abatement Agreement Garmong.pdf

Sharon:

Attached is the Lease – Exhibit A for the Lease Resolution and Tax Abatement Agreement – Exhibit A to the Tax Abatement Resolution. These will not be signed until the Closing next week. I will send you fully executed versions as soon as I have them. That said, these are what will be signed.

Patrick

From: Sharon Swihart
Sent: Tuesday, May 10, 2016 1:23 PM
To: Patrick Lyp
Subject: Resolution 10

Still waiting on the Lease, Exhibit A to the Resolution. I would like to get this stuff put away.

Sharon

LEASE AGREEMENT

This Lease Agreement ("Lease") is made and entered into as of the ____ day of _____, 2016 (the "Effective Date"), by and between Valparaiso Economic Development Corporation, an Indiana non-profit corporation (hereinafter referred to as "Lessor"), with an office address at 162 Lincolnway, Valparaiso, IN 46383, and the City of Valparaiso Redevelopment Commission (hereinafter referred to as "Lessee"), with an office address at 166 West Lincolnway, Valparaiso, IN 46383.

SECTION ONE DESCRIPTION OF DEMISED PREMISES; USE

The Lessor leases to the Lessee all those certain lands more specifically described in Exhibit A attached hereto (the "Real Estate") and an 80,000 square foot shell building (the "Shell Building") to be constructed for Lessor pursuant to the terms of a certain Design/Build Agreement between Garmong Development Company, LLC, an Indiana limited liability company ("Garmong") and Lessor (the "Construction Contract"). The Real Estate, Shell Building and all other improvements now or hereafter located on the land (collectively the "Demised Premises") shall be for the use of the Lessee and the Lessor in marketing the City of Valparaiso, Indiana, for business interests seeking to locate or expand a business venture in the City of Valparaiso, Indiana, and to lease the same to one or more parties to use in connection with their respective businesses.

SECTION TWO TERM; RENT

The term of this Lease shall commence upon completion of the Shell Building to a weather tight condition (closed in and secure) (the "Commencement Date") and continue until (the "Expiration Date") the earlier of (i) ten (10) years thereafter and (ii) the date the Demised Premises are sold and title to the Demised Premises are transferred, or, the date the Demised Premises are leased to a party other than Lessee for a term of at least ten (10) years, excluding renewal options ("Long Term Lease"). Upon any sale or Long Term Lease of the Demised Premises by Lessor, this Lease shall terminate at the closing of the sale or the execution of the Long Term Lease. Lessee will commence paying the semiannual lease payments on the Commencement Date and on January 1 and July 1 of each semiannual period thereafter in advance and without setoff or deduction. If the Commencement Date is not the first day of the applicable semiannual period, the first lease payment shall be on the next January 1 or July 1 but shall be prorated for the number of days in such semiannual period using a 30-day month.

The amount of each semiannual lease payment shall be equal to the semiannual interest payment due by Lessor to Garmong on January 1 and July 1 of each year under that certain Term Note executed by Lessor in favor of Garmong in the original principal amount not to exceed \$5,959,814.10 dated of even date herewith (the "Note").

Notwithstanding anything in this Lease, the Economic Development Agreement (the "Economic Development Agreement") among the City of Valparaiso, Indiana, Lessor, Lessee and Garmong of even date herewith or any other documents between Lessor, Lessee and/or Garmong to the contrary, the annual rents and other amounts due by Lessee hereunder shall be payable only to the extent of, and from, funds provided under that certain "A RESOLUTION OF THE VALPRAISO REDEVELOPMENT COMMISSION APPROVING A FORM OF LEASE AND IRREVOCABLY PLEDGING CERTAIN TAX INCREMENT REVENUES FROM THE

CONSOLIDATED VALPARAISO ALLOCATION AREA TO THE PAYMENT OF LEASE PAYMENTS UNDER THE LEASE" dated March 10, 2016 (the "Resolution"), and no other funds or assets of Lessee shall be available to make any payments under this Lease. Neither Lessor, Garmong nor their respective successors or assigns, shall have any right whatsoever to enforce the liabilities and obligations of Lessee under this Lease or any other documents to which Lessee is a party by any action or proceeding wherein a money judgment or any deficiency judgment shall be sought against Lessee, except that Lessor or Garmong, as applicable, may bring an action for specific performance or any other appropriate action or proceeding to enable Lessor or Garmong, as applicable, to enforce and realize upon its interest in that certain "2016 Shell Building Lease Payment Account" described in the Resolution, provided, however, that any judgment in any such action or proceeding shall be enforceable against Lessee only to the extent of Lessee's interest in the cash collateral in such 2016 Shell Building Lease Payment Account and the account to be established pursuant to Section 3.03(c) of the Economic Development Agreement, and each of Lessor and Garmong each expressly agree that it shall not sue for, seek or demand any deficiency judgment against Lessee in any such action or proceeding under or by reason of or under or in connection with this Lease or other documents to which Lessee is a party.

SECTION THREE OCCUPANCY; FAILURE TO GIVE POSSESSION

The Lessor shall deliver actual possession of the Demised Premises to the Lessee when construction of the Shell Building is in a "weather tight" condition which is anticipated to be on or before May 1, 2017. Provided, however, that the date for delivery of possession shall be extended in the event construction of the proposed improvements is delayed by anything beyond the control of Garmong, including but not limited to strikes, lockouts, labor troubles, inability to procure material, failure of power, restrictive governmental laws or regulations, riots, insurrection, war or other reason of a like nature not the fault of Lessor or Garmong in performing work or doing as required under this Lease, and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

SECTION FOUR REPAIRS

From and after the Commencement Date Lessee shall inspect the Shell Building no less frequently than once every month and notify Lessor and Garmong of any maintenance issues. Lessor shall cause Garmong to perform all maintenance and repairs necessary to maintain the Demised Premises, including without limitation, the Shell Building in good condition and repair, including to perform all structural repairs and/or replacements (including with respect to the roof, skylights, sidewalks, side walls utility lines inside and outside of the Building Shell and all parking areas) and repairs and/or replacements to any electrical, plumbing, heating, air conditioning, sprinkler and hot water systems to be included in the Shell Building, any repairs necessitated by water seepage, and any repairs or changes which may be necessary to make the improvements on the Demised Premises comply with applicable laws, ordinances, orders or regulations of any federal, state, county, or municipal authority now in effect. Lessee shall be responsible for routine site maintenance, including but not limited to, grass cutting, snow and ice removal and trash pickup. The parties hereto acknowledge that Garmong's responsibilities under this Lease shall be paid for by Garmong and included in the principal balance of that certain Note as so provided in the Note.

SECTION FIVE ASSIGNMENT OR SUBLETTING

The Lessee shall not assign or sublet the Demised Premises or any part of the Demised Premises without the consent of Garmong and Lessor, such consent not to be unreasonably withheld, delayed or conditioned. Lessee is granting Lessor a security interest in and pledge of certain cash collateral, as described in the Resolution, to secure the lease payments under this Lease, which security interest and pledge are being assigned to Garmong to secure the payment of the Note.

SECTION SIX DESTRUCTION BY FIRE OR OTHER CASUALTY

If at any time during the term of this Lease the Demised Premises shall be damaged or destroyed by fire or other casualty for which adequate insurance proceeds are available to Lessor by Garmong's lender to rebuild the Demised Premises, the Lessor shall repair and restore the same at the Lessor's expense. Rent and other payments due hereunder shall not abate during any period of damage or destruction. If the insurance proceeds are inadequate to pay the entire cost of restoring the Demised Premises in the reasonable judgment of Lessor, Lessee and Garmong, Lessor or Lessee may terminate this Lease upon notice to the other and Lessor and Lessee shall have no right, title or interest in the insurance proceeds.

SECTION SEVEN CONDEMNATION

Upon receipt of any notice of condemnation of the Demised Premises or any portion thereof, Lessor will promptly notify Lessee of such notice and Lessor and Lessee agree to coordinate their efforts concerning the defense of such condemnation. If the entire Demised Premises, or such portion thereof as would make the remainder unsuitable for sale or lease to a third party, is condemned by any legally constituted authority or if a conveyance or other acquisition in lieu of such condemnation is made, then this Lease shall terminate as of the date possession is required by the condemnor. If a portion of the Demised Premises is condemned

and this Lease is not terminated, the rent for the rest of the term shall not abate. All compensation paid in connection with the condemnation shall belong to and be the sole property of and paid to Garmong and shall be applied to reduce the balance due on the Note.

SECTION EIGHT RIGHT OF LESSOR TO ENTER; FOR-SALE OR FOR LEASE SIGNS

Lessor and Garmong and their respective agents, employees and representatives shall have the right to enter and/or pass through the Demised Premises at any time to examine and inspect the Demised Premises and to show them to actual and prospective lenders, prospective purchasers, tenants or mortgagees of the Demised Premises. Lessee shall have the right to participate in any showings to prospective purchasers or lessees of the Demised Premises.

SECTION NINE QUIET ENJOYMENT

The Lessee shall quietly enjoy the Demised Premises for the full term and for all extensions provided for in this Lease subject to the rights of Lessor to complete its construction of the Demised Premises, and sales and marketing activities contemplated by Lessor and Lessee.

SECTION TEN REAL ESTATE TAXES

Lessee shall be responsible for payment of all real estate taxes, if any.

SECTION ELEVEN SUBORDINATION

Provided Lessor delivers a subordination, non-disturbance and attornment agreement to Lessee from any mortgagee agreeing not to disturb Lessee's tenancy hereunder as long as Lessee is not in default hereunder beyond applicable grace and/or cure periods, this Lease shall be subject and subordinate to the lien of any first mortgage now against the Demised Premises or which may in the future be placed against the Demised Premises, provided that the lien of such mortgage shall not encumber any of Lessee's fixtures, alterations or improvements which, by law or the terms of this Lease, Lessee is permitted to remove from the Demised Premises. Lessor and Lessee shall execute and deliver any non-recourse instrument which may be required by Garmong to obtain financing for the construction of the Shell Building and improvements in confirmation of such subordination, promptly upon Garmong's request. Neither Lessor nor Lessee shall be obligated to sign any documents which impose personal liability on either of such parties.

SECTION TWELVE CHANGES AND ALTERATIONS

The Lessee shall not make any structural or non-structural changes, alterations, additions, and improvements to the Demised Premises without the written approval of Lessor and Garmong, such approval not to be unreasonably withheld, delayed or conditioned.

SECTION THIRTEEN EVENTS OF DEFAULT

Any of the following shall be deemed an Event of Default:

- a. The failure to pay any installment of rent when the same become due and the failure continues for thirty (30) days after written notice thereof to Lessee.
- b. Lessee's failure to perform or observe any other covenant, term or condition of this Lease to be performed or observed by Lessee and the failure continues for thirty (30) days after notice thereof is given to Lessee, provided, if the failure is not susceptible of cure within thirty (30) days, Lessee shall have such additional time not to exceed ninety (90) days from notice as is reasonably necessary to cure the same provided Lessee commences the cure within such thirty (30) day period and thereafter diligently prosecutes the same to completion within such ninety (90) day period.
- c. The filing of the voluntary or involuntary petition in bankruptcy filed against Lessee; the filing of petition against Lessee seeking appointment of a receiver; a general assignment for benefit of creditors by Lessee; or the taking of any party of the leasehold by foreclosure, levy, execution, attachment or other process of law or equity.
- d. Lessee's default under the Assignment and Pledge Agreement from Lessee to Lessor or the Assignment of Assignment and Pledge Agreement from Lessor to Garmong, which default continues uncured for thirty (30) days after Lessee's receipt of written notice thereof from Garmong.
- e. Lessee's default under the Account Control Agreement among Lessor, Lessee and _____ Bank or the Assignment of Account Control Agreement from Lessor to Garmong, which default continues uncured for thirty (30) days after Lessee's receipt of written notice thereof from Garmong.

Notwithstanding anything in this Lease to the contrary, no Event of Default shall be deemed to occur if Lessee fails to make any payment of rent or other amounts due under this Lease because insufficient funds are available under the Resolution for payment of the same.

SECTION FOURTEEN LANDLORD'S REMEDIES

Upon the occurrence of any Event of Default Lessor may, at its option, in addition to any other remedy or right it has hereunder or by law, resume possession by an action in law or equity or by force or otherwise and without being liable in trespass or for any damages and without terminating this lease and relet the Demised Premises and recover from Lessee an amount equal to the rent and other payments provided for in this Lease which would have become due and owing hereunder from time to time during the unexpired term plus the cost and expenses paid or incurred by Lessor from time to time in connection with:

- a. Obtaining possession of the Demised Premises (including Lessor's reasonable attorney fees) and removal and storage and disposition of Lessee's or other occupant's property;
- b. Care, maintenance and repair of the Demised Premises while vacant;
- c. Reletting the whole or any part of the Demised Premises;
- d. Repairing, altering, renovating, partitioning, enlarging, remodeling or otherwise putting the Demised Premises into condition acceptable to, and reasonably necessary to obtain new lessees;
- e. Making all repairs, alterations and improvements required to be made by Lessee hereunder and of performing all covenants of the Lessee relating to the condition of the Demised Premises, less the rent and other payments, if any, actually collected and allocable to the Demised Premises or to the portions thereof relet by Landlord.

Lessor shall not have the right, under any circumstance, to accelerate the rent or other payments due hereunder.

SECTION FIFTEEN LANDLORD DEFAULT AND TENANT'S REMEDIES

If Lessor fails to perform any of its obligations hereunder, Lessor shall not be in default and Lessee shall not have any rights or remedies growing out of such failure unless Lessee gives Lessor written notice setting forth in reasonable detail the nature and extent of such failure and such failure is not cured within thirty (30) days following Lessor's receipt of such notice or such longer period as may otherwise be provided herein. If such failure cannot reasonably be cured within thirty (30) days, the length for curing shall be extended as reasonably required, provided Lessor has commenced to cure the same within such thirty (30) day period and thereafter diligently prosecutes such cure to completion. Lessee's sole remedy shall be to cure the default. Any amounts owed by Lessor to Lessee for any breach or failure by Landlord to perform shall be due with interest at ___% per annum from the date due until paid in full but Lessee shall have no right to withhold or setoff sums due from rent.

SECTION SIXTEEN MECHANIC'S LIEN

Lessee shall not permit any Statement of Intention to hold a Mechanic's Lien or any other lien (collectively "Lien") to be filed against the Demised Premises or any part thereof or against any interest or estate therein as a result of the acts or omissions of Lessee, its agents, contractors or employees. If such Lien shall be filed, Lessee shall, upon demand by Lessor, cause said Lien to be released of record and indemnify and hold the Lessor harmless from the operation thereof and from any expense (including attorneys' fees) incurred by Lessor in connection therewith, or Lessor may compel the prosecution of an action for foreclosure of such Lien by the lienor and if any action is commenced to foreclose such Lien, Lessee shall cause such action to be promptly dismissed within thirty (30) days of Lessor's request. Nothing in this Lease shall be construed to constitute consent to or request to any parties to perform any labor or furnish any services or materials for the improvement, alteration or repair of the Demised Premises nor as giving the Lessee the right or authority to contract for, authorize or permit the performance of any labor or

services or the furnishing of any material that would permit the attaching of a Lien to the subject Demised Premises or any claim or interest therein.

SECTION SEVENTEEN INDEMNIFICATION AND RELEASE

Regardless of whether or not separate, several, joint or concurrent liability may be imposed upon Lessor, Lessee shall indemnify and hold harmless Lessor and Garmong from and against all damages, claims and liability arising from or in connection with Lessee's control or use of the Demised Premises, including without limitation, any damage or injury to person or property but expressly excluding any and all damages, claims or liabilities arising from or in connection with Lessor's or Garmong's acts or omissions. If Lessor or Garmong shall, without fault, become a party to litigation commenced by or against Lessee, then Lessee shall indemnify and hold Lessor and Garmong harmless from the same. The indemnification provided by this section shall include the respective legal costs and fees (including reasonable attorneys' fees) of Lessor and Garmong in connection with any such claim, action or proceeding.

SECTION EIGHTEEN SURRENDER

Upon the expiration or sooner termination by Lessor of this Lease, Lessee shall surrender to Lessor the Demised Premises in good and clean condition and in the same order and condition as that in which Lessee received the Demised Premises, ordinary wear and tear and damage from casualty or condemnation excepted and shall, on or before the expiration or earlier termination by Lessor, remove all of Lessee's property from the Demised Premises. Lessor may, at Lessee's expense, remove and store any of Lessee's property which remains in the Demised Premises at the expiration or termination hereof and any property not claimed by Lessee within thirty (30) days is hereby agreed to be abandoned to Lessor and may be sold by Lessor with proceeds applied to damages, costs and expenses incurred by Lessor.

SECTION NINETEEN CONSEQUENTIAL DAMAGE

Neither Lessor, Garmong nor Lessee shall be liable to the other for any consequential damages for injury to person or property because of or in any way related to any breach of this Lease by any of such parties or with respect to the condition of the Demised Premises and without regard to such party's negligence. For the purposes of this Lease, consequential damages shall mean such damages, loss or injuries that do not flow directly from the act of a party, but rather from the consequences or results of such an act.

SECTION TWENTY NOTICES

Any notice or demand that, under the terms of this Lease Agreement or by any statute or ordinance, must or may be given or made by a party to this Lease, shall be in writing and shall be given by certified mail, return receipt requested or by recognized overnight courier sent to the other party at the address of its principal office listed at the beginning of this Lease, or to such other address as such party may from time to time designate by notice. Any notices to Lessor or Lessee shall also be sent to Garmong at 3050 Poplar Street, Terre Haute, Indiana 47803.

SECTION TWENTY-ONE INSURANCE

Lessor shall contract with Garmong to require Garmong to keep in full force and effect commencing the Commencement Date and throughout the term the following policies of insurance: (a) "all-risk" property insurance covering the entire Demised Premises (excluding Lessee's property), at its full replacement cost; (b) builder's risk insurance with limits acceptable to Lessor; and (c) commercial general or excess liability insurance, including personal injury and property damage, in the amount of not less than \$1,000,000.00 per occurrence, and \$2,000,000.00 annual general aggregate and Lessor shall contract with Garmong to require Garmong to provide certificates of insurance prior to the Commencement Date and at least fifteen (15) days prior to any expiration date. To the extent permitted by law, and without affecting the coverage provided by insurance required to be maintained hereunder, Lessor and Lessee each waive any right to recover against the other for (a) damages to property, (b) damages to all or any portion of the Demised Premises, (c) claims arising by reason of the foregoing, to the extent such damages and claims are insured against, or required to be insured against, by Lessor or Lessee under this Lease, or (d) claims paid by Lessee's workers' compensation carrier. This provision is intended to waive, fully and for the benefit of each party, any rights and/or claims which might give rise to a right of subrogation by any insurance carrier. The coverage obtained by Lessor pursuant to this Lease shall include, without limitation, a waiver of subrogation by the carrier which conforms to the provisions of this section. All insurance policies carried hereunder shall include the interests of Lessor and Lessee, and shall name Lessor, Garmong and Lessee as additional insureds.

SECTION TWENTY-TWO SIGNS

Lessee may, upon obtaining any necessary permits from governmental authorities, erect and maintain at its own expense, during the term of this Lease, signs of such dimensions and materials as it may desire at locations of its choice on the Real Estate. No hard surface or painted signage is to be mounted or allowed on the exterior of the Demised Premises. Vinyl banners may be hung with written approval from Lessor and Garmong.

SECTION TWENTY-THREE BINDING EFFECT

The covenants and agreements contained in this Lease shall inure to the benefit of and be binding on the parties to this Lease and successors or assigns. With the exception of termination rights expressly provided for herein, this Lease shall not be amended, modified or terminated without the consent of Garmong and its lender, such consent not to be unreasonably withheld, delayed or conditioned, each of Garmong and its lender being a third party beneficiary hereof.

SECTION TWENTY-FOUR NON-LIABILITY

Neither Lessor nor its affiliates, owners, partners, members, managers, directors, officers, agents and employees (collectively "Lessor's Agents") shall be liable to Lessee for any loss, injury, or damage, to Lessee or to any other person, or to its or their property, irrespective of the cause of such injury, damage or loss unless attributable to Lessor, Lessor's Agents or Garmong's acts or omissions or Garmong's obligations under the Construction Contract. Neither

Lessor nor Lessor's Agents shall be liable (a) for any damage caused by other persons in, upon or about the Demised Premises, or caused by operations in construction of any public or quasi-public work; (b) with respect to matters for which Lessor is liable, for consequential or indirect damages purportedly arising out of any loss of use of the Demised Premises or any equipment or facilities therein by Lessee or any person claiming through or under Lessee; (c) any defect in the Demised Premises; (d) injury or damage to person or property caused by fire, or theft, or resulting from the operation of heating or air conditioning or lighting apparatus, or from falling plaster, or from steam, gas, electricity, water, rain, snow, ice, or dampness, that may leak or flow from any part of the Demised Premises, or from the pipes, appliances or plumbing work of the same or (c) any claims relating to or arising out of this Lease.

SECTION TWENTY-FIVE BROKER

Lessor and Lessee covenant, warrant and represent to each other that there is no broker to whom brokerage fees or commissions are due as a result of the parties' execution of this Lease. Each party agrees to and hereby does defend, indemnify and hold the other harmless against and from any brokerage commissions or finder's fees or claims therefor by a party claiming to have dealt with the indemnifying party and all costs, expenses and liabilities in connection therewith, including, without limitation, reasonable attorneys' fees and expenses, for any breach of the foregoing. The foregoing indemnification shall survive the termination or expiration of this Lease.

Notwithstanding the preceding paragraph, In the event a professional real estate broker presents a bona fide prospect resulting in the sale or long term lease of the project ~~or~~ the parties to this Lease collectively determine that the engagement of a broker is in the best interest of the parties, any brokerage fees that result from such engagement may be included in the Note balance.

SECTION TWENTY-SIX NON-WAIVER

The failure of either party to insist, in any one or more instances, upon the strict performance of any one or more of the obligations of this Lease, or to exercise any election herein contained, shall not be construed as a waiver or relinquishment for the future of the performance of such one or more obligations of this Lease or of the right to exercise such election, but the Lease shall continue and remain in full force and effect with respect to any subsequent breach, act or omission. The receipt and acceptance by Lessor or Agent of rent or other payments due hereunder with knowledge of breach by Lessee of any obligation of this Lease shall not be deemed a waiver of such breach.

SECTION TWENTY-SEVEN LEGAL COSTS

Any party in breach or default under this Lease (the "Defaulting Party") shall reimburse the other party (the "Nondefaulting Party") upon demand for any legal fees and court (or other administrative proceeding) costs or expenses that the Nondefaulting Party incurs in connection with the breach or default, regardless whether suit is commenced or judgment entered. Such costs shall include legal fees and costs incurred for the negotiation of a settlement, enforcement of rights or otherwise. Furthermore, in the event of litigation, the court in such action shall award to the party in whose favor a judgment is entered a reasonable sum as attorneys' fees and

costs, which sum shall be paid by the losing party. Lessee shall pay Lessor's attorneys' reasonable fees incurred in connection with Lessee's request for Lessor's consent under provisions of this Lease governing assignment and subletting, or in connection with any other act which Lessee proposes to do and which requires Lessor's consent.

SECTION TWENTY-EIGHT GOVERNING LAW; CONSTRUCTION

This Lease shall be governed by and construed in accordance with the laws of the state of Indiana. If any provision of this Lease shall be invalid or unenforceable, the remainder of this Lease shall not be affected but shall be enforced to the extent permitted by law. The captions, headings and titles in this Lease are solely for convenience of reference and shall not affect its interpretation. This Lease shall be construed without regard to any presumption or other rule requiring construction against the party causing this Lease to be drafted. Each covenant, agreement, obligation, or other provision of this Lease to be performed by Lessee, shall be construed as a separate and independent covenant of Lessee, not dependent on any other provision of this Lease. All terms and words used in this Lease, regardless of the number or gender in which they are used, shall be deemed to include any other number and any other gender as the context may require. This Lease may be executed in counterpart and, when all counterpart documents are executed, the counterparts shall constitute a single binding instrument.

SECTION TWENTY-NINE AUTHORITY OF LESSEE

Lessee shall deliver to Lessor and Garmon, concurrently with the delivery to Lessor and Garmon of an executed Lease, certified resolutions of Lessee's commissioners or other governing person or body (i) authorizing execution and delivery of this Lease and the performance by Lessee of its obligations hereunder and (ii) certifying the authority of the party executing the Lease as having been duly authorized to do so.

SECTION THIRTY WAIVER OF TRIAL BY JURY

THE LESSOR AND THE LESSEE, TO THE FULLEST EXTENT THAT THEY MAY LAWFULLY DO SO, HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING BROUGHT BY ANY PARTY TO THIS LEASE WITH RESPECT TO THIS LEASE, THE DEMISED PREMISES, OR ANY OTHER MATTER RELATED TO THIS LEASE OR THE DEMISED PREMISES. If Lessor commences any summary proceeding or action for collection of Base Rent, Additional Rent or other sums, tenant shall not interpose any permissive counterclaim of any nature in any such proceeding or action.

SECTION THIRTY-ONE CONSENTS OR APPROVALS

If Lessor is required to consent or approve any matter, and Lessee disagrees with Lessor's failure to provide such consent or approval, Lessee's sole remedy shall be to file suit for the court to determine if Lessor's failure to consent or approve such matter was appropriate, and Lessor shall have no liability for damages, consequential or otherwise, if Lessor's failure to consent or approve is held to be inappropriate and should have been given.

SECTION THIRTY-TWO

MERGER

All prior understandings and agreements between the parties relating to the lease of the Demised Premises are merged in this Lease, which alone fully and completely expresses the agreement of the parties. No agreement shall be effective to modify this Lease, in whole or in part, unless such agreement is in writing, and is signed by Lessor, Lessee and approved in writing by Garmong, the third party beneficiary of this Lease.

SECTION THIRTY-THREE TERMINATION RIGHT

This Lease shall terminate in the event of a sale or long term lease of the Demised Premises in accordance with the terms hereof and subject to the conditions set forth in the Economic Development Agreement.

SECTION THIRTY-FOUR NO ORAL MODIFICATION

This Lease may not be modified except by an instrument in writing, signed by the parties to this Lease, their heirs, legal representatives, successors, or assigns.

SECTION THIRTY-FIVE HAZARDOUS MATERIALS

If, at any time or from time to time during the Term (or any extension thereof) any Hazardous Material (defined below) is generated, transported, stored, used, treated or disposed of at, to, from, on or in the Demised Premises: (i) Lessee shall, at its own cost, at all times comply (and cause all others to comply) with all laws (federal, state or local) relating to Hazardous Materials, including, but not limited to, all Environmental Laws (defined below), and Lessee shall further, at its own cost, obtain and maintain in full force and effect at all times all permits and other approvals required in connection therewith; (ii) Lessee shall promptly provide Lessor with complete copies of all communications, permits or agreements with, from or issued by any governmental authority or agency (federal, state or local) or any private entity relating in any way to the presence, release, threat of release, or placement of Hazardous Materials on or in the Demised Premises, or the generation, transportation, storage, use, treatment, or disposal at, on, in or from the Demised Premises, of any Hazardous Materials; (iii) Lessor and their respective agents and employees shall have the right, at Lessee's cost and expense, to (a) enter the Demised Premises and (b) conduct appropriate tests for the purposes of ascertaining Lessee's compliance with all applicable Laws (including Environmental Laws), rules or permits relating in any way to the generation, transport, storage, use, treatment, disposal or presence of Hazardous Materials on, at, in or from the Demised Premises or any portion thereof; and (iv) upon written request by Lessor, Lessee shall provide Lessor with the results of reasonably appropriate tests of air, water or soil to demonstrate that Lessee complies with all applicable Laws relating in any way to the generation, transport, storage, use, treatment, disposal or presence of Hazardous Materials on, at, in or from the Demised Premises or any portion thereof. This Section 35 does not authorize the generation, transportation, storage, use, treatment or disposal of any Hazardous Materials at, to, from, on or in the Demised Premises in contravention of this Section 35. Lessee shall indemnify, defend and hold harmless, Lessor from and against any and all damages, claims, costs, expenses (including legal fees) and any other liability in any way related to the presence of Hazardous Materials on the Demised Premises during the Term or the violation of any Environmental Law

during the Term. Lessee shall not enter into any settlement agreement, consent decree or other compromise with respect to any claims relating to any Hazardous Materials in any way connected to the Demised Premises without first obtaining Lessor's written consent (which consent may be given or withheld in Lessor's sole discretion) and affording Lessor the reasonable opportunity to participate in any such proceedings. As used herein, the term (x) "Environmental Laws" shall mean any and all Laws pertaining to Hazardous Materials or that otherwise deal with or relate to air or water quality, air emissions, soil or ground conditions or other environmental matters of any kind; and (y) "Hazardous Materials" shall mean any waste, material or substance (whether in the form of liquids, solids or gases, and whether or not air-borne) that is or may be deemed to be or include a pesticide, petroleum, asbestos, polychlorinated biphenyl, radioactive material, urea formaldehyde or any other pollutant or contaminant that is or may be deemed to be hazardous, toxic, ignitable, reactive, corrosive, dangerous, harmful or injurious, or that presents a risk to public health or to the environment, and that is or becomes regulated by any Environmental Law. Lessee's obligations under this Section 35 shall expressly exclude Hazardous Materials introduced to the Demised Premises by Garmong or Garmong's employees, agents, contractors or invitees for which Garmong shall be liable. The undertakings, covenants and obligations imposed on Lessee under this Section 35 shall survive the termination or expiration of this Lease.

SECTION THIRTY-SIX

NON-RECOURSE NATURE OF LESSOR'S OBLIGATIONS; REMOVAL OF LESSOR IN THE EVENT OF LITIGATION

Notwithstanding any provision of this Lease to the contrary, the obligations of the Lessor hereunder shall be absolutely non-recourse as against the Lessor, and no recovery may be had by the Lessee or Garmong beyond the Lessor's rights in the Real Estate. The parties agree, and the Lessee shall require Garmong to agree, that in the event of litigation, the Lessor shall have the right to transfer the Real Estate to the Lessee and be held harmless from any liability by the Lessee, Garmong or any other person or entity.

SECTION THIRTY-SEVEN

NON-RECOURSE NATURE OF LESSEE'S OBLIGATIONS UNDER LEASE

Lessee's obligations hereunder shall be limited as, and to the extent, so provided in the last paragraph of Section 3.03 of that certain Economic Development Agreement by and among the City of Valparaiso, Lessee, Lessor and Garmong Development Company, LLC.

IN WITNESS WHEREOF, each party to this agreement has caused it to be executed as of the Effective Date.

VALPARAISO ECONOMIC DEVELOPMENT
CORPORATION, an Indiana non-profit corporation

By: _____
Rex Richards, President

VALPARAISO RDEVELOPMENT COMMISSION

By: _____
Rob Thorgren, President

EXHIBIT A

LEGAL DESCRIPTION

A part of the Southwest Quarter of the Northeast Quarter of Section 17, Township 35 North, Range 5 West, Washington Township, Porter County, Indiana, being more particularly described as follows:

Commencing at the Northeast Corner of the Northwest Quarter of the Northeast Quarter of said Section 17-35-5; thence South $00^{\circ}30'40''$ West along the East Line of said Northwest Quarter-Quarter 1329.71 feet; to the northeast corner of right-of-way dedicated by the Secondary Development Plan of the Lakes of Valparaiso PUD recorded as Instrument Number 2015-005420 in the Porter County Recorder's Office; thence North $89^{\circ}31'15''$ West along the north line of said right-of-way 508.32 feet to the Point of Beginning of the here-in described parcel; thence South $00^{\circ}20'12''$ West, 680.00 feet; thence North $89^{\circ}31'15''$ West, 501.30 feet to a non-tangent curve to the right on the East right-of-way line of Memorial Parkway, having a radius of 450.00 feet and a central angle of $13^{\circ}38'46''$; thence along the east right-of-way line of said Memorial Parkway the following 6 courses:

1. Northerly along said curve an arc distance of 107.18 feet (said arc being subtended by a chord having a bearing of North $06^{\circ}29'11''$ West and a length of 106.92 feet);
2. thence North $00^{\circ}20'12''$ East, 204.14 feet to the point of curvature of a curve to the right, having a radius of 10.00 feet and central angle of $090^{\circ}10'29''$;
3. Northeasterly along said curve an arc distance of 15.74 feet;
4. North $00^{\circ}16'43''$ East, 60.00 feet to a non-tangent curve to the right, having a radius of 10.00 feet and a central angle of $089^{\circ}49'31''$;
5. Northwesterly along said curve an arc distance of 15.68 feet (said arc being subtended by a chord having a bearing of North $44^{\circ}34'35''$ West and a length of 14.12 feet);
6. North $00^{\circ}20'12''$ East, 289.72 feet; thence South $89^{\circ}31'15''$ East, 514.00 feet to the Point of Beginning, containing 8.00 acres, more or less.

To be known as:

Lot Number 8 in The Lakes of Valparaiso Planned Unit Development Phase 2 as per plat thereof recorded _____, 2016 in Plat Book _____, Page(s) _____, Instrument Number _____.

Property 275 E, Valparaiso, IN

Document comparison by Workshare Compare on Tuesday, April 19, 2016
10:14:57 AM

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