RESOLUTION NO. 18, 2024

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF VALPARAISO, INDIANA GRANTING BARLEY PROPERTIES, LLC, AN ASSESSED VALUATION DEDUCTION (TAX ABATEMENT) FOR TANGIBLE REAL PROPERTY UNDER INDIANA CODE § 6-1.1-12.1

WHEREAS, Pursuant to Resolution No. 5-2010, as confirmed by Resolution No. 7-2010, the Common Council of the City of Valparaiso, Indiana (the "City"), designated a certain area located within the City as an economic revitalization area (an "ERA");

WHEREAS, Resolution No. 5-2010 remains in full force and effect;

WHEREAS, **BARLEY PROPERTIES, LLC**, ("Company") has filed with the Common Council a **Statements of Benefits Real Property Improvements (FORM SB-1/Real Property)** dated **March 13, 2024** proposing real property improvements, more specifically related to constructing a multi-tenant building marketed toward small businesses and incubator space for growing businesses serving Valparaiso and NW Indiana, anticipated to cost **$10,500,000** (the "Project"), estimated to be completed on or prior to **December 31, 2024** and to be fully assessed on or prior to **January 1, 2025**;

WHEREAS, A Statements of Benefits Real Property (FORM SB-1/Real Property) was submitted to the Common Council as the designating body before and prior to the completion of construction, renovation, redevelopment or installation of real property improvements related to the Project for which the Company desires to request an assessed valuation deduction;

WHEREAS, The Company's real property located at **2750 Barley Road** in the City (real property parcel number **64-10-31-276-002.000-004**) is within the boundaries of an ERA, and therefore the Common Council may make a determination pursuant to IC 6-1.1-12.1-3(b) based upon the evidence as to whether Company shall be allowed an assessed valuation deduction.

NOW, THEREFORE, BE IT RESOLVED that the actions of the Common Council of the City of Valparaiso, Indiana are based upon the evidence as presented by the Company upon review of the FORM SB-1/Real Property as well as other pertinent information and upon the following findings and determinations pursuant to IC 6-1.1-12.1-3(b), such that:

(1) The Project is reasonable for a project of its nature;

(2) The estimated number of individuals who will be employed or whose employment will be retained can reasonably be expected to result from the construction, renovation, redevelopment or installation of real property improvements related of the Project;

(3) The estimated annual salaries of those individuals who will be employed or whose employment will be retained can reasonably be expected to result from the from the construction, renovation, redevelopment or installation of real property improvements related of the Project; and

(4) The totality of the benefits is sufficient to justify an assessed valuation deduction on the Project.

BE IT FURTHER RESOLVED that the Common Council acknowledges that the Project is located within a designated allocation area of the Valparaiso Redevelopment District, more specifically the Consolidated Allocation Area.

BE IT FURTHER RESOLVED that the Common Council hereby grants an assessed valuation deduction (Tax Abatement) from tangible real property **limited to a cost of $10,500,000 to be completed by December 31, 2024 for full assessment on the January 1, 2025** for an abatement period of **seven (7) years** to the Company in accordance with IC 6-1.1-12.1-3(c) and IC 6-1.1-12.1-17(b) as it relates to the Project.

BE IT FURTHER RESOLVED that assessed valuation deduction(s) (Tax Abatement) from tangible real property shall be applied only to the Company's qualified real property improvements to be located at **2750 Barley Road** in the City (64-10-31-276-002.000-004).

BE IT FURTHER RESOLVED that the Common Council hereby grants an assessed valuation deduction (Tax Abatement) of real property with an abatement schedule provided below pursuant IC 6-1.1-12.1-17(b) consistent with the above abatement period as it relates to the Project.

Approved Abatement Period Schedule:

Tangible real property improvements:

a. *To be installed and placed into service **by December 31, 2024;***
b. *Construction as completed is limited to the following assessment date: **January 1, 2025;***
c. *Real property construction during the period under section (a) above and for the assessment dates identified under section (b) is **limited to a cost of $11,300,000**.*

Year of Abatement Period	Deduction Percentage
Year One (1)	100%
Year Two (2)	85%
Year Three (3)	71%
Year Four (4)	57%
Year Five (5)	43%
Year Six (6)	29%
Year Seven (7)	14%

BE IT FURTHER RESOLVED that having received the consent of the Company and in accordance with Indiana Code 6-1.1-12.1-14(b), as agreed upon in the Tax Abatement Agreement (**EXHIBIT A**), and pursuant to Indiana Code 6-1.1-12.1-14 for each year the Company's real property tax liability is reduced by an assessed valuation deduction related specifically to the Project, the Company shall pay to the Porter County Treasurer a fee in the amount computed and determined by the Porter County Auditor pursuant to the provisions of subsection (c) of Indiana Code 6-1.1-12.1-14 (the "Imposed Fee") such that:

(1) The Common Council hereby determines that **fifteen percent (15%)** shall be the percentage to be applied by the Porter County Auditor for purposes of STEP TWO of subsection (c) of Indiana Code 6-1.1-12.1-14(c);

(2) Accordingly, for each year the Imposed Fee is payable by the Company, the Imposed Fee shall be equal to the lesser of One Hundred Thousand Dollars ($100,000) or fifteen percent (15%) of the additional amount of real property taxes that would have been paid by the Company during that year if the deductions approved in this Resolution had not

been in effect (i.e., 15% of the Company's real property tax savings attributable to a deduction from the assessed valuation from the Project); and

(3) The Imposed Fee as collected shall be distributed to the **City of Valparaiso Redevelopment Commission** as a public entity established to promote economic development within the corporate limits of the City as determined by the Common Council as the designating body.

BE IT FURTHER RESOLVED that the final determination of the amount of assessed valuation deduction as applied to the Project for real property improvements shall be made by the appropriate Porter County or State of Indiana agency.

BE IT FURTHER RESOLVED that the Clerk-Treasurer of the City is hereby directed to file with the Office of the Porter County Auditor the following information as it applies to this Resolution and the approval of the Company's assessed valuation deduction in order to insure the application of an assessed valuation deduction as calculated by the Office of the Porter County Assessor, assuming an annual FORM CF-1 is approved by the City Council and all required documents are filed in a timely manner:

1. The FORM SB-1/Real Property, as approved, properly completed and executed consistent with this Resolution and as signed and attested by the appropriate City officials;
2. A certified copy of this Resolution; and
3. A copy of the meeting minutes which approved this Resolution and the FORM SB-1/Real Property.

BE IT FURTHER RESOLVED that if any part, clause, or portion of this Resolution shall be adjudged invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of this Resolution as a whole or any other part, clause, or portion of this Resolution.

BE IT FURTHER RESOLVED that this Resolution shall be in full force and effect from and after its passage and adoption by the City's Common Council and upon the signature of the Mayor of the City as the executive of the City.

PASSED AND ADOPTED BY THE COMMON COUNCIL OF THE CITY OF VALPARAISO, INDIANA,

by a vote of 7 "Ayes" and 0 "Nays" of those Council members present on this day,

July 22, 2024.

Jon Costas
Mayor

ATTEST:

Holly Taylor, Clerk-Treasurer

TAX ABATEMENT AGREEMENT
Real Property

22nd THIS TAX ABATEMENT AGREEMENT ("Agreement") is made entered into as of the 22nd day of July, 2024 ("Effective Date"), by the **Common Council of the City of Valparaiso** ("City'); and **Barley Properties LLC** ("Applicant").

WITNESSTH

WHEREAS Applicant is the owner of real property, which is part of **2750 Barley Road**, Valparaiso, Indiana and identified by the Porter County Assessor as parcel **64-10-31-276-002.000-004** ("Parcel");

WHEREAS, Applicant has submitted a completed Statement of Benefits forms for real property tax abatement in such form is incorporated by referenced into this Agreement; and,

WHEREAS, the City, after due and careful consideration, has concluded that the Project (as defined below) is consistent with the overall vision for commercial development and job creation and specifically finds that it is in the best interest of the City and its inhabitants to approve the requested tax abatement.

NOW, THEREFORE in consideration of the foregoing and of the mutual covenants and agreements herein contained, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

ARTICLE I
The Project

1.1 The Project. Applicant working with Larsen-Danielson Construction, will construct **115,000 +/- s/f** flex-building for commercial use ("Project"). Applicant commits to investing at least **$10,500,000.00** (excluding land acquisition costs) towards real property improvements. Such Project investments shall be of a quality, size, character and appearance substantially similar to Applicant's prior representations to the City.

1.2 Project Assessment. Applicant represents and commits that the real property improvements, once completed, will have minimum gross assessment of no less than **$6,216,200.00** excluding the assessed valuation on the preexisting real property ("Minimum Assessed Value").

1.3 Development of Project. The Applicant commits to commence the Project upon execution of this Agreement and agrees to complete the Project by **December 31, 2024** for full assessment by **January 1, 2025** ("Completion Date")

ARTICLE II
Tax Abatement

2.1 Tax Abatement. Subject to compliance with the procedures required by law and to ongoing compliance by the Applicant for maintaining a tax abatement, the City will offer tax abatement on the Project for a term of seven (7) years commencing tax year **2025** and payable in **2026** having a schedule of:

Year 1:	100%
Year 2:	85%
Year 3:	71%
Year 4:	57%
Year 5:	43%
Year 6:	29%
Year 7:	14%

2.2 Information. During the term of the tax abatement and for a period of two (2) years thereafter, the City or its authorized agent may require information from the Applicant concerning the nature of the Project, the approved capital expenditures for the Project, the number of full time permanent positions retained and newly created by the Projects and the average wage rates and salaries (excluding benefits and overtime) associated with the positions, and the Applicant shall provide the City with adequate written evidence thereof within 30 days of such request. The City shall utilize this information and the information required to be filed by the Applicant in the CF-1 Compliance with the SB-1/RP form to verify that the Applicant has made reasonable efforts to substantially comply with SB-1 pursuant to Ind. Code § 6-1.1-12.1-5.9 and with all commitments during the duration of the tax abatement.

2.3 Termination and Repayment.

A. Right to Terminate. The City, by and through the Council reserves the right to terminate the tax abatement deductions if it determines that the Applicant has not substantially complied with all of the commitments (including, but not limited to, the commitments of Sections 1.1 to 1.3 and 2.4 to 2.7).

B. Notice of Termination and Repayment for Noncompliance. In the event that the City determines that the tax abatement deductions should be terminated or that any of the tax abatement savings should be repaid, it will give the Applicant notice of such determination, including a written statement calculating the amount due from the Applicant, and will provide the Applicant with an opportunity to meet with the City's designated representatives to show cause why the abatement should not be terminated and/or the tax benefits repaid. Such notice shall state the names of the person with whom the Applicant may meet and will provide that the Applicant shall have thirty (30) days from the date of such notice to arrange such meeting and to provide its evidence concerning why the abatement termination and/or tax benefits repayment should not occur. If, after giving such notice and receiving such evidence, if any, the City determines that the abatement termination and/or tax benefits repayment action is proper, the Applicant shall be provided with written notice and a hearing before the Council before any final action shall be taken terminating the abatement and/or requiring repayment of tax benefits. If the Council adopts a resolution terminating the tax abatement and/or requiring repayment of tax benefits, the Applicant shall be entitled to appeal that determination to a Porter County Superior or Circuit Court.

C. Time of Repayment. In the event that the City requires repayment of the tax abatement benefits as provided hereunder, it shall provide Applicant with a written statement calculating the amount due ("Statement"), and the Applicant shall make such repayment to the City within thirty (30) days of the date of delivery of the Statement, unless such repayment has been stayed pending an appeal. If the Applicant does not make timely repayment, the City shall be entitled to all reasonable costs and attorneys' incurred in the enforcement and collection of the tax abatement savings required to be repaid hereunder

2.4

A. Local Contractors, Suppliers and Vendors. Applicant acknowledges the use of local incentives for this Project and recognizes the benefits of utilizing local contractors and suppliers. The City strongly urges Applicant to maximize the employment opportunities of the citizens, and resources found within Northwest Indiana. As material part of this Agreement, Applicant agrees that it will use commercially reasonable efforts to employ price competitive contractors, suppliers and vendors located within Northwest Indiana (Lake and Porter counties) with respect to the Project and will additionally use such efforts to purchase materials and supplies from price competitive suppliers and vendors located within Northwest Indiana (Lake and Porter counties). Upon request, Applicant shall provide the City an accounting of the Project as to the: (i) contractors and suppliers used; and (ii) "commercially reasonable efforts" used by the Applicant. Failure to comply with this provision shall result in the revocation of Applicant's tax abatement as provided under Section 2.3.

B. Conditions on Contractors that receive more than $500,000.00 from Applicant for work relating to the Project. Applicant acknowledges the use of local incentives for this Project and recognizes the benefits of utilizing contractors that adhere to good practices with their employees and management of their job site Any contractor who provides work towards the Project and receives total compensation that exceeds $500,000 shall comply with the following:

Upon request provide a copy of an adopted written plan for employee drug testing that covers all employees of the contractor who will perform work on the project that meets or exceeds the requirements get forth in Indiana Code §4-13-18-5 or Indiana Code §4-13-18-6.

Upon request, provide a copy of any professional or trade licensing required by law for any trade or specialty area in which the contractor will perform work.

Upon request provide a statement that individuals who will perform work on the Project on behalf of the Applicant will be properly classified as either (i) an employee or (ii) an independent contractor, under all applicable state and federal laws. In addition, the City shall have the right to request and receive a list of workers that have worked on the Project at any given time with their employment status. This obligation shall extend to any company that provides workers to a contractor.

2.5 Community Engagement. Applicant acknowledges, as a business within Valparaiso, its obligation (and that of its employees) to fully engage with the community and support groups, organizations, initiatives and institutions that contribute towards the betterment of Valparaiso. Such engagement and support may include, but is not limited to, financial contributions, volunteering of time, and/or participating in social, cultural, civic and religious events within Valparaiso.

2.6 Tax Abatement Fee. As provided by Indiana Code §6-1.1-12.1-14, the City is imposing a fifteen percent (15%) fee to be remitted to the Valparaiso Redevelopment Commission on the tax abatement Applicant consents to such fee.

2.7 Assessment Appeal Waiver. From the date this Agreement is executed until December 31, 2032, Applicant or any subsequent individual/entity that has or will receive any benefits from the granting of this tax abatement by the City, shall not challenge and/ or appeal (and irrevocably waives it right to challenge and/or appeal) any Notice of Assessment as provided under Indiana Code §6-1.1-15-1.

ARTICLE III
Additional Provisions

3.1 Indemnity: No Joint Venture or Partnership. The Applicant covenants and agrees at its expenses to pay and to indemnify and save the City, and their officers and agents, including the Economic Development Director ("Indemnitees") harmless from and against, any and all claims, damages, demands, expenses and liabilities relating to bodily injury or property damage resulting directly or indirectly from the Applicant's (and/or any affiliate's thereof) activities with respect to the Project unless such claims, damages, demands expenses or liabilities arise by reason for the negligent act or omission for the City or other Indemnitees or arise from the City's breach of this Agreement. The parties further agree that this Agreement does not constitute a joint venture or partnership.

3.2 Amendment. This Agreement can only be amended by the mutual consent of the parties to this Agreement.

3.3 No Other Agreement. Except 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.

3.4 Severability. If any provision, covenant, agreement or portion of this Agreement or its application to any person, entity or property, is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants, agreements or portions of this Agreement and, to that end any provisions covenants, agreements or portions of this Agreement are declared to be severable.

3.5 Indiana Law/Venue/Attorneys' Fees. This Agreement shall be construed in accordance with the laws of the State of Indiana. Any action to enforce any provision of this Agreement shall be filed in the state courts of Porter County, Indiana. The successful party in any action to enforce this Agreement shall be entitled to reimbursement of court costs and attorney fees.

3.6 Notices. All notices and requests required pursuant to this Agreement shall be deemed sufficiently made if delivered, as follows:

Applicant:	With Copy to:
Bluejay II, LLC c/o Jeff Leetz 2850 Barley Road Valparai303 Indiana 46385	Todd A. Leeth Leeth Law LLC 2700 Valparaiso St., #2412 Valparaiso, Indiana 46384

To City:

Patrick Lyp
City Attorney
162 W. Lincolnway
Valparaiso, Indiana 46383

or at such other address as the parties may indicate in writing to the other party either by personal delivery courier or by registered mail,, return receipt requested, with proof of delivery thereof. Mailed notices shall be deemed effective on the third day after mailing; all other notices shall be effective when delivered.

3.7 Counterparts. This Agreement may be executed in several counterpart each of which shall be an original and a!! of which shall con3titute but one and the same agreement.

3.8 Recordation of Agreement. At the request of any party the parties hereby agree to execute and deliver the original of this Agreement or a Memorandum thereof in property form for recording in the appropriate, property or governmental records

3.9 Consent: approval. Except as otherwise provided herein whenever or approval of any party is requited, such consent or approval shall not be unreasonably withheld,

3.10 Assignment. Eights and obligations contained in this Agreement may not be assigned by the Applicant without the express prior written consent: of the Commission provided however, that the Applicant may assign its rights and obligations hereunder to affiliate of the Applicant upon notice and consent of the City, but any such assignment an affiliate of the Applicant shall not have the effect of releasing the Applicant from its obligations hereunder,

3.11 No Third Party Beneficiaries. This Agreement shall be deemed to be for the benefit solely of the parties hereto and shall not be deemed to be for the benefit of any third party.

3.12 Authority. Each individual executing this Agreement represents that they possess the requisite authority to sign this Agreement.

IN WITNESS WHEREOF, the parties have duly executed this Agreement pursuant to all requisite authorizations as of the date first above written.

Applicant:

BARLEY PROPERTIES, LLC	CITY OF VALPARAISO
By: [signature]	By: [signature]
Name: Bruce H. Leetz	Jon Costas
Title: Manager	Mayor