

TOWN OF ZIONSVILLE

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement ("Agreement") is dated as of the ____ day of _____, 200__, and serves as the confirmation of the commitment by _____ ("Applicant"), pending a _____, 200__ public hearing, to comply with the project description and job creation and retention (and associated wage rates and salaries) figures contained in its Tax Abatement Application, Statement of Benefits Form and this Agreement ("Commitments").

Section 1. Grant of Abatement. The Zionsville Town Council ("Town") commits to providing a _____ () year real property tax abatement for the Applicant's capital expenditure of not less than \$_____ associated with the redevelopment and/or rehabilitation activities and a _____ () year personal property tax abatement for the Applicant's capital expenditures of not less than \$_____ attributable to the installation of new manufacturing equipment ("Project") approved as a part of the Commitments. The Project will retain _____ full-time permanent positions (average wage rate of \$_____ per hour, excluding benefits & overtime) and will create _____ full-time permanent positions (average wage rate of \$_____ per hour, excluding benefits & overtime). The capital expenditures for the Project and the job retention and creation shall occur before or within two (2) years of the estimated completion date of _____, _____, contained in the approved Statement of Benefits (SB-1) Form ("Commitment Date").

Section 2. Annual Information. During the term of the tax abatement and for a period of two (2) years thereafter, the Town or its authorized agent may annually request 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 Project, and the average wage rates and salaries (excluding benefits & overtime) associated with the positions, and the Applicant shall provide the Town with adequate written evidence thereof within 15 days of such request ("Annual Survey"). The Town shall utilize this information and the information required to be filed by the Applicant in the CF-1-Compliance with the Statement of Benefits form to verify that the Applicant has complied with the commitments contained in the Commitments at all times after the Commitment Date and during the duration of the tax abatement. The Applicant further agrees to provide the Town with such additional information requested by the Town related to the information provided in the Annual Survey and the CF-1 form within a reasonable time following any such request.

Section 3. Right to Terminate Abatement. (a) The Town, by and through the Council, reserves the right to terminate the real and/or personal property tax abatement deductions if it determines that the Applicant has not made reasonable efforts to

substantially comply with all of the Commitments, and the Applicant's failure to substantially comply with the Commitments was not due to factors beyond its control. As used in this Agreement, "substantial compliance" shall mean the Applicant's compliance with the following:

1. Making capital expenditures of not less than \$ _____ (real property) and \$ _____ (personal property) for the Project;
2. the retention of not less than _____ full-time permanent positions with average wages of \$ _____ (excluding benefits and overtime); and
3. the creation of not less than _____ full-time permanent positions with average wages of \$ _____ (excluding benefits and overtime).

b. As used in this Agreement, factors beyond the control of the Applicant shall only include factors not reasonably foreseeable at the time of the designation application and submission of Statement of Benefits which are not caused by any act or omission of the Applicant and which materially and adversely affect the ability of the Applicant to substantially comply with this Agreement.

c. If the Town terminates the tax abatement deductions, it may require the Applicant to repay the Town all or a portion of the tax abatement savings received through the date of such termination. The amount of tax abatement required to be repaid for each year of noncompliance shall not exceed an amount equal to the percentage by which the Applicant has failed to attain substantial compliance in any of the aforementioned investment, position retention and/or creation and average hourly wage rate and salary categories, multiplied by the dollar amount of taxes actually abated. If the Applicant fails to substantially comply with more than one of the aforementioned categories, repayment shall be based on the highest level of non-compliance.

d. If at any time during the term of this Agreement, whether before or after the Commitment Date, the Applicant shall: (i) cease operations at the facility for which the tax abatement was granted; or (ii) announce the cessation of operations at such facility, then the Town may immediately terminate the tax abatement deductions, and upon such termination, require Applicant to repay all of the tax abatement savings received through the date of such termination.

e. In the event that the Town determines that the tax abatement deductions should be terminated or that all or a portion 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 Town'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 Town determines that the abatement termination and/or the tax benefits repayment action is proper, the Applicant shall be provided with written notice and a hearing before the Town 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 Boone County Superior or Circuit Court.

f. In the event the Town requires repayment of the tax abatement benefits as provided hereunder, it shall provide Applicant with a written statement calculating the amount due ("Statement"), and Applicant shall make such repayment to the Town within thirty (30) days of the date of delivery of the Statement. If the Applicant does not make timely repayment, the Town shall be entitled to all reasonable costs and attorneys fees incurred in the enforcement and collection of the tax abatement savings required to be repaid hereunder.

Section 4. General Provisions. (a) This Agreement contains the entire understanding between the Town and the Applicant with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements and understandings, inducements, and conditions, express or implied, oral or written, except as herein contained. This Agreement may not be modified or amended other than by an agreement in writing signed by the Town and the Applicant. The Applicant understands that any and all filings required to be made or actions required to be taken to initiate or maintain the tax abatement are solely the responsibility of the Applicant.

b. Neither the failure nor any delay on the part of the Town to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege with respect to any occurrence or be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

c. This Agreement and all questions relating to its validity, interpretation, performance and enforcement shall be governed by the laws and decisions of the courts of the State of Indiana, without regard to conflicts of law principles.

d. The Applicant hereby irrevocably consents to the jurisdiction of the Courts of the State of Indiana and of the Boone County Circuit or Superior Court in

connection with any action or proceeding arising out of or relating to this Agreement or any documents or instrument delivered with respect to any of the obligations hereunder, and any action related to this Agreement shall be brought in such County and in such Court.

e. All notices, requests, demands, and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been received when delivered by hand or by facsimile (with confirmation by registered or certified mail) or on the third business day following the mailing, by registered or certified mail, postage prepaid, return receipt requested, thereof, addressed as set forth below:

If to Applicant: _____

Attn: _____

If to the Town: Zionsville Town Council
Zionsville Town Hall
1100 West Oak Street
Zionsville, Indiana 46077
and
Boone County Economic Development Corporation
218 East Washington Street
Lebanon, Indiana 46052

f. This Agreement shall be binding upon and inure to the benefit of the Town and the Applicant and their successors and assigns, except that no party may assign or transfer its rights or obligations under this Agreement without the prior written consent of the other party hereto, which consent shall not be unreasonably withheld.

g. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. By executing this Agreement, each person so executing affirms that he or she has been duly authorized to execute this Agreement on behalf of such party and that this Agreement constitutes a valid and binding obligation of such party.

h. The provisions of this Agreement and of each section or other subdivision herein are independent of and separable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part unless this Agreement is rendered totally unenforceable thereby.

i. No official, director, officer, employee or agent of the Town shall be charged personally by the Applicant, its employees or agents with any liabilities or expenses of defense or be held personally liable to the Applicant under any term or provision of this Agreement or because of the execution by such party of this Agreement or because of any default by such party hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

APPLICANT

TOWN

TOWN OF ZIONSVILLE,
INDIANA by its
Town Council

By: _____

By: _____

Printed: _____

Printed: _____

Title: _____

Title: _____

Approved as to Legal Adequacy
and Form this ____ day of
_____, 200__.

Andrew B. Buroker,
Zionsville Town Attorney