

## RESOLUTION NO. 03, 2013

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF VALPARAISO, INDIANA GRANTING A WAIVER OF NONCOMPLIANCE AS IT APPLIES TO AN UNTIMELY AND LATE FILING OF A FORM 322/RE TO THE OFFICE OF THE PORTER COUNTY AUDITOR AND A FORM CF-1/REAL PROPERTY TO THE CITY OF VALPARAISO, INDIANA WITH RESPECT TO AN ASSESSED VALUATION DEDUCTION (TAX ABATEMENT) FOR TANGIBLE REAL PROPERTY PURSUANT TO INDIANA CODE 6-1.1-12.1 AS APPROVED BY RESOLUTION NO. 18, 2011 OF THE COMMON COUNCIL OF THE CITY OF VALPARAISO, INDIANA FOR LDCC, LCC (AKA LARSON-DANIELSON CONSTRUCTION COMPANY, NOW APPLETREE VENTURES)

**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 Council"), designated certain real estate located within the City of Valparaiso, Indiana (the "City"), as an economic revitalization area (the "ERA") and provided, among other things, that deductions from the assessed value as qualified may be approved by resolution of the City Council; and,

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

**WHEREAS,** LDCC, LLC (aka the Larson-Danielson Construction Company) (the "Company") filed with the City Council a Statement of Benefits Real Property Improvement (FORM SB-1/RE) dated May 26, 2011 (the "Statement of Benefits") that proposed real property improvements, more specifically related to the construction of a new 215,630 square foot beverage distribution facility including 32,323 square feet of two-story office space anticipated to cost \$15,685,500 (the "Project") estimated to be completed on January 31, 2012 and to be fully assessed on March 1, 2013; and,

**WHEREAS,** The City Council on June 13, 2011 passed and adopted Resolution No. 18, 2011 that granted an assessed valuation deduction (Tax Abatement) from tangible real property for a period of ten (10) years to the Company in accordance with Indiana Code 6-1.1-12.1 as it relates to the Project, for which said resolution included the condition of an imposed fee of fifteen percent (15%) pursuant to Indiana Code 6-1.1-12.1-14 (the "Imposed Fee"); and,

**WHEREAS,** The Clerk-Treasurer as directed by the City Council caused to be filed with the Office of the Porter County Auditor the following documents: (i) the FORM SB-1/RE as approved, as signed and as properly completed consistent with Resolution No. 18, 2011; (ii) a copy of Resolution No. 18, 2011; and (iii) a copy of the meeting minutes of the June 13, 2011 meeting of the City Council for which Resolution No. 18, 2011 was approved and adopted; and

**WHEREAS,** The Company's Project and new facility to be located at 2850 Barley Street on real property key number 64-10-31-200-006.000-004 was split for the March 1, 2011 assessment date for taxes due and payable in 2012 and became real property key number 64-10-31-200-009.000-004, pursuant to the Office of the Porter County Auditor, for real property assessment and tax purposes ; and

**WHEREAS,** The Company represents that the Project as described in the Statement of Benefits Real Property Improvement (FORM SB-1/RE) dated May 26, 2011 is complete and as of August 17, 2011 was fully assessed for the March 1, 2012 assessment date pursuant to the notes on the Real Property Assessment Record Card of the Office of the Porter County Assessor; and,

**WHEREAS,** The Company received a FORM 11 C/I dated September 28, 2012 for real property key number 64-10-31-200-009.000-004 as notification of the Project's full assessment for the March 1, 2012 assessment date for taxes due and payable in 2013; and

**WHEREAS,** Prior to May 10, 2012, the Company failed to file with the Office of the Porter County Auditor, as required pursuant to Indiana Code 6-1.1-12.1, a FORM 322/RE (Application for Deduction from Assessed Valuation of Structures in Economic Revitalization Area-ERA); and,

**WHEREAS,** Prior to May 15, 2012, the Company failed to file with the Common Council of the City for consideration and determination for submission to the Office of the Porter County Auditor a FORM CF-1/Real Property (Compliance with Statement of Benefits Real Estate Improvements), as required pursuant to Indiana Code 6-1.1-12.1; and,

**WHEREAS,** As a result of the Company's failure to file in a timely manner: (i) a FORM 322/RE with the Office of the Porter County Auditor and (ii) a FORM CF-1/Real Property with the Common Council of the City for consideration and determination for submission to the Office of the Porter County Auditor for application of an assessed valuation deduction, the Office of the Porter County Auditor did not apply the appropriate Year One deduction percentage to the Project as fully assessed for the March 1, 2012 assessment date to determine the ERA deduction of the Project to be applied to the gross assessment for real property key number 64-10-31-200-009.000-004; and,

**WHEREAS,** The Company did file: (i) a FORM 322/RE as dated February 25, 2013 with the Office of the Porter County Auditor and (ii) a FORM CF-1/Real Property as dated February 25, 2013 with the Common Council of the City for consideration and determination for submission to the Office of the Porter County Auditor for application of an assessed valuation deduction as it applies to the gross assessment for real property key number 64-10-31-200-009.000-004; and,

**WHEREAS,** Indiana Code 6-1.1-12.1-9.5 authorizes the City Council as the designating body by resolution to waive noncompliance with various requirements of the economic revitalization area statute (Indiana Code 6-1.1-12.1), more specifically Section 9.5(b)(1) related to "A filing deadline applicable to an application, a statement of benefits, or another document that is required to be filed under this chapter;" and,

**WHEREAS,** The Company has requested that the City Council exercise its authority to waive noncompliance by adopting a resolution pursuant to Indiana Code 6-1.1-12.1-9.5 such that said resolution shall identify the property, the assessed valuation deduction, and the taxpayer effected by the resolution as well as furthermore identify the noncompliance for which the waiver is to apply and make a finding that the noncompliance has been corrected before the adoption of this resolution; and,

**WHEREAS,** The City Council upon consideration of the request of the Company and the potential tax levy impacts to each taxing unit now desires to waive the Company's noncompliance and failure to file in a timely manner: (i) a FORM 322/RE with the Office of the Porter County Auditor and (ii) a FORM CF-1/Real Property with the Common Council of the City pursuant to its authority under Indiana Code 6-1.1-12.1-9.5; and,

**WHEREAS,** The City Council conducted a public hearing on March 11, 2013 for the purposed of considering the adoption of this Resolution.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council that based upon all of the evidence presented determines and finds that the Company's failure to file in a timely manner: (i) a FORM 322/RE with the Office of the Porter County Auditor and (ii) a FORM CF-1/Real Property with the Common Council of the City are hereby waived pursuant to Indiana Code 6-1.1-12.1-9.5, subject to the terms and conditions set forth below:

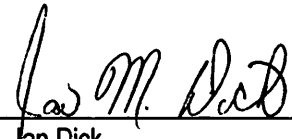
- (1) A deduction of qualified assessed valuation as it relates to the Project shall be applied to the gross assessment of real property key number 64-10-31-200-009.000-004.
- (2) The assessed valuation deduction passed and adopted by Resolution No. 18, 2011 on June 13, 2011 that granted an assessed valuation deduction (Tax Abatement) from tangible real property for a period of ten (10) years to LDDC, LLC (aka the Larson-Danielson Construction Company, and including subsequent owners of said Project) in accordance with Indiana Code 6-1.1-12.1 as it relates to the Project pursuant to the Statement of Benefits dated May 26, 2011 shall remain in effect and applicable.
- (3) The Company filed a FORM 322/RE as dated February 25, 2013 with the Office of the Porter County Auditor (as date stamped February 25, 2013) in order to correct said untimely filing for application of an assessed valuation deduction for the Project as it applies to the gross assessment for real property key number 64-10-31-200-009.000-004.
- (4) The Company filed a FORM CF-1/Real Property as dated February 25, 2013 with the City Council of the City (as date stamped February 25, 2013) in order to correct said untimely filing, such that the City Council now finds and determines that said FORM CF-1/Real Property is hereby approved for submission and filing with the Office of the Porter County Auditor for application of an assessed valuation deduction for the Project as it applies to the gross assessment for real property key number 64-10-31-200-009.000-004.
- (5) The City Council as the designating body determines that: (i) granting the a waiver of noncompliance as permitted pursuant to Indiana Code 6-1.1-12.1-9.5 to the March 1, 2012 assessment date, as the prior assessment date for which said noncompliance would have applied assuming a FORM 322/RE and a FORM CF-1/Real Property were filed in a timely manner, would cause an undue burden on taxing units since the March 1, 2012 net assessed valuations and the Pay 2013 tax rates for Porter County have been certified pursuant to an Indiana Department of Local Government Finance Budget Order dated February 6, 2013 such that the distribution of tax levies collected would be less than anticipated and that such tax levy impact are deemed material to each taxing unit, and (ii) the assessed valuation deduction percentage schedule for Year One shall therefore first be applied to the March 1, 2013 assessment date as the subsequent year and thereafter through Year Ten accordingly, being the March 1, 2022 assessment date.
- (6) The City Council will not entertain or consider any future waivers of noncompliance pursuant to Indiana Code 6-1.1-12.1 as submitted by the Company for untimely filings or noncompliance.
- (7) Upon adoption and passage of this Resolution, the Company agrees to waive a hearing with the City Council as required pursuant to the 2012 Pay 2013 FORM CF-1/RE dated February 25, 2013 for presentation of substantial compliance by the Company and waives its appeal rights under Indiana Code 6-1.1-12.1-5.9(e) as it applies the conditions of this Resolution, as duly initialed and dated on the 2012 Pay 2013 FORM CF-1/RE dated February 25, 2013.

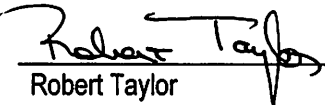
BE IT FURTHER RESOLVED that consistent with Resolution No. 18, 2011 as passed and adopted on June 13, 2011 and pursuant to Indiana Code 6-1.1-12.1-14, the Company shall pay to the Porter County Treasurer a fee in the amount computed and determined by the Porter County Auditor pursuant to the provisions of subsection (c) of Indiana Code 6-1.1-12.1-14 (the "Imposed Fee") such that 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 served by the City Council as the designating body.

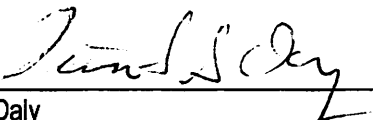
BE IT FURTHER RESOLVED that if any part, clause, or portion of this resolution shall be adjudged invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of this Resolution as a whole or any other part, clause, or portion of this Resolution.


ADOPTED AND APPROVED by a vote of all members present and voting of the Common Council of the City of Valparaiso, Indiana this day March 11, 2013.


  
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Deb Butterfield

  
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Jan Dick

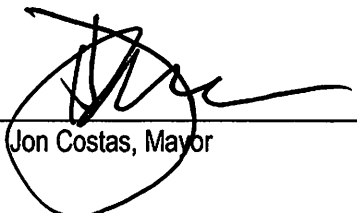
  
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Robert Taylor

  
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Tim Daly

  
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Joey Larf

  
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Michael Baird

  
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John Bowker

  
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Jon Costas, Mayor

ATTEST:

  
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Sharon Swihart, Clerk-Treasurer