

## RESOLUTION NO. 19, 2008

### A RESOLUTION FOR THE PARTIAL WAIVER OF NONCOMPLIANCE, THE CONDITIONAL APPROVAL OF THE LATE-FILED STATEMENT OF BENEFITS OF U.G.N., INC. AND THE CONDITIONAL APPROVAL OF CERTAIN LIMITED ASSESSED VALUATION DEDUCTIONS

- WHEREAS,** Pursuant to Resolution No. 9, 1992, as confirmed by Resolution No. 10, 1992, 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 of new manufacturing equipment installed in the ERA may be allowed over a ten-year deduction period; and,
- WHEREAS,** Resolution No. 10 1992 remains in full force and effect; and,
- WHEREAS,** Resolution No. 12, 1995 extended the time period of use of assessed valuation deductions (tax abatement) from December 31, 1995 to December 31, 2006; and,
- WHEREAS,** Resolution No. 3, 2007 extended the time period of use of assessed valuation deductions (tax abatement) from January 1, 2007 to January 1, 2017; and,
- WHEREAS,** U.G.N., Inc. (the "Company") filed with the City Council a statement of benefits dated July 7, 2008 (the "Original Statement of Benefits") proposing the installation of certain new manufacturing equipment in the ERA during the period from August 1, 2008 through March 1, 2010, (the "New Equipment") which New Equipment was estimated to have a total cost of \$5,484,000; and,
- WHEREAS,** Pursuant to Resolution No. 16, 2008, the City Council approved the Original Statement of Benefits on July 28, 2008 for an assessed valuation deduction on the New Equipment for a period of ten (10) years; and,
- WHEREAS,** The Company now represents that it has installed during the period between September 1, 2005 through December 1, 2007, certain new manufacturing equipment in the ERA with a total cost of \$3,648,660 (the "Previously Installed New Equipment"), which Previously Installed New Equipment is in addition to the New Equipment described in the Original Statement of Benefits; and,
- WHEREAS,** Prior to the installation of the Previously Installed New Equipment, the Company failed to submit or file with the City Council a completed statement of benefits estimating the total cost of the Previously Installed New Equipment and other benefits; and,
- WHEREAS,** As a result of the Company's failure to submit a completed statement of benefits form to the City Council as the designating body, the Company on August 1, 2008 late-filed with the City Council a statement of benefits (the "New Statement of Benefits") that reflects the total cost in the amount of \$3,648,660 for the Previously Installed New Equipment, a copy of which is attached hereto as EXHIBIT A; and,
- WHEREAS,** Indiana Code 6-1.1-12.1-11.3 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), including a person's failure to timely file a statement of benefits with the designating body before the installation of new manufacturing equipment; and,

**WHEREAS,** The Company has requested that the City Council exercise its authority to partially waive noncompliance by adopting this Resolution and conditionally approving the New Statement of Benefits under the terms set forth herein and in the Agreement Regarding Partial Waiver of Noncompliance between the City and the Company (the "Agreement"); and,

**WHEREAS,** The City Council has determined to exercise its authority under Indiana Code 6-1.1-12.1-11.3 to partially waive the Company's noncompliance with the statement of benefits requirement in connection with the Company's New Statement of Benefits specifically related to the installation of the Previously Installed New Equipment in the ERA subject to the terms and conditions set forth in this Resolution; and,

**WHEREAS,** The City Council has determined to take all necessary action to effectuate the imposition of the fee provided for in Indiana Code 6-1.1-12.1-14, and to otherwise incorporate into this Resolution, the provisions of Indiana Code 6-1.1-12.1-14; and,

**WHEREAS,** The City Council conducted a public hearing on October 13, 2008 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 and subject to the execution of the Agreement, the City Council finds that the Company's failure to file the New Statement of Benefits with the City Council prior to the installation of the Previously Installed New Equipment between September 1, 2005 through December 1, 2007 having a total cost of \$3,648,660, should be and is hereby partially waived pursuant to Indiana Code 6-1.1-12.1-11.3, and the Company's New Statement of Benefits should be and is hereby approved subject to the terms and conditions set forth below:

- (1) Deductions from the assessed valuation of any said Previously Installed New Equipment that was installed in the ERA by the Company between September 1, 2005 through December 1, 2007 with a total cost limited to \$3,648,660 shall be based upon a ten (10) year assessed valuation deduction period; however, said assessed valuation deductions shall be effective for and applicable to the Previously Installed New Equipment in the following manner:
  - (a) The Previously Installed New Equipment assessed on March 1, 2006 (the "2006 Equipment") shall only be eligible and qualify for the final eight (8) years of a ten (10) year assessed valuation deduction period that should have commenced on March 1, 2006; therefore, the City Council approves only those deductions from the assessed valuation of the 2006 Equipment for the final eight (8) assessment dates commencing with the March 1, 2008 assessment date for taxes payable in 2009 through the March 1, 2015 assessment date for taxes payable in 2016, in amounts computed in accordance with the applicable law and deduction percentages under Indiana Code 6-1.1-12.1 for the third (3<sup>rd</sup>) through the tenth (10<sup>th</sup>) years of the ten (10) year abatement period of the 2006 Equipment, respectively; consequently, no deductions from assessed valuation of the 2006 Equipment shall be allowed for the March 1, 2006 assessment date for taxes payable in 2007 nor the March 1, 2007 assessment date for taxes payable in 2008; and,
  - (b) The Previously Installed New Equipment assessed on March 1, 2007 (the "2007 Equipment") shall only be eligible and qualify for the final nine (9) years of a ten (10) year assessed valuation deduction period that should have commenced on March 1, 2007; therefore, the City Council approves only those deductions from the assessed valuation of the 2007 Equipment for the final nine (9) assessment dates commencing with the March

- 1, 2008 assessment date for taxes payable in 2009 through the March 1, 2016 assessment date for taxes payable in 2017, in amounts computed in accordance with the applicable law and deduction percentages under Indiana Code 6-1.1-12.1 for the second (2<sup>nd</sup>) through the tenth (10<sup>th</sup>) years of the ten (10) year abatement period of the 2007 Equipment, respectively; consequently, no deductions from assessed valuation of the 2007 Equipment shall be allowed for the March 1, 2007 assessment date for taxes payable in 2008; and,
- (c) The Previously Installed New Equipment assessed on March 1, 2008 (the "2008 Equipment") shall be eligible and qualify for the full ten (10) years of a ten (10) year assessed valuation deduction period that should have commenced on March 1, 2008; therefore, the City Council approves deductions from the assessed valuation of the 2008 Equipment for the ten (10) assessment dates commencing with the March 1, 2008 assessment date for taxes payable in 2009 through the March 1, 2017 assessment date for taxes payable in 2018, in amounts computed in accordance with the applicable law and deduction percentages under Indiana Code 6-1.1-12.1 for the first (1<sup>st</sup>) through the tenth (10<sup>th</sup>) years of the ten (10) year abatement period of the 2008 Equipment, respectively; and,
- (2) In addition to the foregoing conditions, the New Statement of Benefits and the limited assessed valuation deductions hereby approved are also subject to the conditions that the Company shall not seek or accept, or otherwise benefit from, any new manufacturing equipment deduction from the assessed valuation of the Previously Installed New Equipment as of any assessment date prior to the March 1, 2008 assessment date; this includes, without limitation, the condition that the Company shall not seek or accept any refund of or credit for any personal property taxes with respect to the Previously Installed New Equipment as of the March 1, 2006 or the March 1, 2007 assessment dates paid respectively to the Porter County Treasurer or payable to the Company.

**BE IT FURTHER RESOLVED** that having reviewed and considered the Company's New Statement of Benefits, the City Council makes the following findings of fact pursuant to Indiana Code 6-1.1-12.1-4-5(c):

- (1) The estimate of the cost of the new manufacturing equipment is reasonable of that type; and,
- (2) The estimate of the number of individuals who will be employed or whose equipment will be retained can be reasonable expected to result from the installation of the new manufacturing equipment; and,
- (3) The estimate of the annual salaries of those individuals who will be employed or whose employment will be retained can be reasonably expected to result from the proposed installation of new manufacturing equipment; and,
- (4) Any other benefits about which information was requested are benefits that can be reasonably expected to result from the proposed installation of new manufacturing equipment; and the totality of benefits is sufficient to justify the deductions; and,
- (5) The totality of benefits is sufficient to justify a deduction of assessed valuation of the Previously Installed New Equipment.

**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), a copy of which is attached hereto as **EXHIBIT B** and is made a part hereof as incorporated herein, and pursuant to Indiana Code 6-1.1-12.1-14 for each year the Company's personal property tax liability is reduced by an assessed valuation deduction related specifically to the Previously Installed New Equipment under Indiana Code 6-1.1-12.1 that is approved by the City

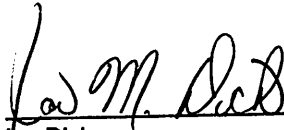
Council in this Resolution, the Company shall pay to the Porter County Treasurer a fee in the amount computed and determined by the Porter County Auditor pursuant to the provisions of subsection (c) of Indiana Code 6-1.1-12.1-14 (the "Fee") such that:


- (1) The City 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; and,
- (2) Accordingly, for each year the Fee is payable by the Company, the Fee shall be equal to the lesser of One Hundred Thousand Dollars (\$100,000) or fifteen percent (15%) of the additional amount of personal 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 personal property tax savings attributable to a deduction from the assessed value of any of the Previously Installed New Equipment for that year); and,
- (3) The 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.

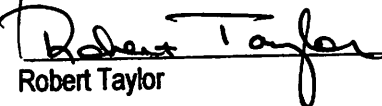
**BE IT FURTHER RESOLVED** that if any part, clause, or portion of this resolution shall be adjudged invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of this Resolution as a whole or any other part, clause, or portion of this Resolution.


**ADOPTED AND APPROVED** by a vote of all members present and voting of the Common Council of the City of Valparaiso, Indiana this day **October 13, 2008**.

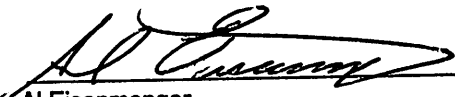
  
John Bowker

  
Jan Dick

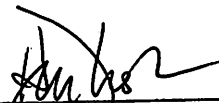
  
Joey Larr

  
Robert Taylor

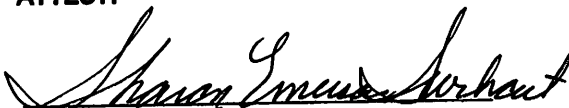
  
Kelly Ward

  
Al Eisenmenger

  
Art Elwood

  
Jon Costas, Mayor

**ATTEST:**

  
Sharon Emerson Swihart, Clerk-Treasurer