

ECONOMIC DEVELOPMENT AGREEMENT
by and between
CITY OF FRANKLIN, INDIANA,
FRANKLIN REDEVELOPMENT COMMISSION,
and
EXEL, INC. DBA DHL SUPPLY CHAIN (USA)

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ECONOMIC DEVELOPMENT AGREEMENT

THIS ECONOMIC DEVELOPMENT AGREEMENT, ("Agreement") made this ____ day of _____, 2023, ("Effective Date") by and between the CITY OF FRANKLIN, an Indiana municipal corporation ("City"), the Franklin REDEVELOPMENT COMMISSION, as the governing body of the City of Franklin, Redevelopment District, existing and authorized pursuant to Ind. Code § 36-7-14 *et. seq.*, as amended ("RDC") (collectively the RDC and the City are referred to as "City Parties") and EXEL, INC. DBA DHL SUPPLY CHAIN (USA), a foreign for-profit corporation organized and existing pursuant to the laws of the Commonwealth of Massachusetts and admitted to do business in Indiana ("DHL") (collectively City, RDC and DHL are referred to as "Parties", individually "Party").

RECITALS

WHEREAS, the City Parties desire to enter into agreements with private entities to encourage investment and foster economic development within the City;

WHEREAS, DHL is a privately held contract logistics provider and desires to develop a multi-building warehouse project in the City that includes five (5) warehouse buildings of approximately a total of three million seven hundred and seventy-nine thousand, six hundred and seventy (3,779,670) square feet of warehouse space, (the "Project"), all as depicted on the concept plan attached as Exhibit "A" (the "Concept Plan");

WHEREAS, the Project will be developed and constructed on property consisting of the two (2) parcels of real property, to be owned by DHL, as described in attached Exhibit "B", (the "Project Property") and generally known as Crossroads Corporate Center (formerly known as the Neyer Logistics Park North);

WHEREAS, DHL estimates that it will invest approximately Two Hundred and Fifty-Eight Million Dollars and No Cents (\$258,000,000.00) developing and constructing the Project on the Project Property;

WHEREAS, DHL estimates that the development and construction of the Project is expected to result in the creation of approximately four hundred (400) permanent full-time-equivalent jobs with an aggregate annual payroll of approximately Nineteen Million Dollars and No Cents (\$19,000,000.00);

WHEREAS, the RDC had previously established the Franklin Downtown/I-65 Amended Integrated Economic Development Area ("Area"), as amended; and designated within the Area certain allocation areas ("Allocation Areas") for purposes of capturing tax increment; and created an allocation fund or funds ("Allocation Fund") for the Area into which the tax increment is deposited; and approved the Franklin Downtown/I-65 Amended Economic Development Plan (the "Plan"), as amended;

WHEREAS, the Project will serve the Area;

WHEREAS, the development of the Project will: (i) assist in the retention and expansion of a significant business enterprise in the Area; (ii) bring additional capital investment to the Area; (iii) return underutilized and vacant space in the Area to its highest and best use; (iv) be of public utility and benefit as measured by the retention and creation of full time jobs; and (v) increase the level and diversity of the Area's tax base; all of which help to strengthen the economic well-being of the Area and encourage additional growth in the Area;

Whereas, DHL has advised the City that, without the assistance of the City Parties and the provision of the economic development incentives described in this Agreement, the Project will not be completed;

WHEREAS, the City Parties are authorized to enter into this Agreement with DHL to provide the incentives that will induce DHL to expedite the Project and continue future Project operations in the Area, thus strengthening the economic well-being of the Area;

Whereas, the RDC is authorized, pursuant to IC 36-7-14-25(b)(3)(J), to pay expenses incurred by the RDC for local public improvements that are in the Area or serving the Area;

WHEREAS, the incentives to be provided by the RDC for the Project as described in this Agreement are for local public improvements within the Area or serving the Area;

WHEREAS, entering into the Agreement and providing incentives to induce DHL to expedite the Project and continue future Project operations in the Area, which fosters and encourages economic development, promotes the use of the Project Property in a manner that best serves the interest of the City and its citizens, promotes significant opportunities for gainful employment, and helps retain and expand a significant business enterprise in the City, all of which help the RDC accomplish the purposes of the Act;

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

1. GENERAL PROVISIONS

- 1.1 Incorporation of Recitals and Exhibits. The Recitals and Exhibits referred herein are true and accurate in all respects and made a part hereof for all purposes as if fully set forth, and constitute additional promises, representations and warranties of the Parties and are incorporated within this Agreement as if fully rewritten herein.
- 1.2 Mutual Assistance. The Parties agree, subject to further proceedings required by law, to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications, as may be reasonably necessary or appropriate, from time to time, to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions and intent;

- 1.3 Definitions. Wherever used in the Agreement, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the documents include references to identified sections, and the titles of other documents or forms:
- (a) "Act" means Ind. Code § 36-7-14 *et.seq.* and all related and supplemental statutes as in effect on the Effective Date of this Agreement;
 - (b) "Approved Plans" shall mean the Project's Primary Plat, Construction Plans, that have been or will be provided by DHL to the City;
 - (c) "Closing" means: (a) payment of the Road Improvement Amount; (b) the closing of the purchase of the Project Property by DHL; and (c) the conveyance of the Project Property to DHL;
 - (d) "E-Verify Program" mean: (a) the program currently operated by the U.S. Department of Homeland Security that electronically confirms an individual's eligibility to work in the United States, authority for which is found in Title IV, Subtitle A, of the Illegal Immigration Reform and Immigration Responsibility Act of 1996, P.L. 104-208, 110 Stat. 3009 (8 U.S.C. §1324a), as amended; or (b) any successor work authorization program designated by the U.S. Department of Homeland Security or such other federal agency as may be authorized to verify the work authorization status of newly-hired employees. The E-Verify Program is the "E-Verify Program" defined in Ind. Code. 22-5-1.7-3;
 - (e) "Force Majeure" means, with respect to a Party: (a) an act or omission of the other Party; or (b) any other cause that is not within the reasonable control of such Party (including, without limitation: (i) unusually inclement weather; (ii) the unusual unavailability of materials, equipment, services or labor; (iii) epidemics, pandemics, and other public health circumstances resulting in a governmental declaration of a public health emergency; and (iv) utility or energy shortages or acts or omissions of public utility providers);
 - (f) "Laws" means any and all applicable Federal, State, and Local, laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction;
 - (g) "Project Property" means the real estate described in Exhibit "B" attached hereto.

1.4 Authorized Representatives

- (a) DHL designates Matt Yang as the representative authorized to act on behalf of DHL and to implement, manage and be responsible for the DHL Obligations described in this Agreement; for all day-to-day functions and the scope of work, along with the communications with the City Parties

("DHL Representative"). The DHL Representative shall be responsible to communicate with the City Parties. At any time, DHL make designate a replacement DHL Representative by providing notice of such replacement to the City Parties;

- (b) City Parties designate its City Engineer or designee, as the representative authorized to act on behalf of the City Parties with respect to the obligation of the RDC and City as set forth in this Agreement ("City Parties' Representative").

1.5 Relationship of the Parties. It is specifically understood and agreed to by and between the Parties that:

- (a) The Project is a private development;
- (b) The City Parties and DHL hereby renounce the existence of any form of agency relationship, joint venture or partnership between the City Parties and DHL and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between the City Parties and DHL.

1.6 Conflict of Interest; City Parties Representatives Not Individually Liable. No member, official, or employee of the City Parties shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his/her personal interests or the interests of any corporation, partnership, or association in which he/she is, directly or indirectly, interested. No member, official, or employee, or agent of the City Parties shall be personally liable to DHL, or any successor in interest, in the event of any default or breach by the City Parties or for any amount which may become due to DHL or successor or assign or on any obligations under the terms of the Agreement. No DHL Representative, partner, employee or agent of DHL or successors of them shall be personally liable to the City Parties, or any successor in interest, under this Agreement;

1.7 DHL Representations. DHL covenants, represents and warrants the following:

- (a) DHL is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is authorized to do business in the State of Indiana;
- (b) DHL has the power and authority to enter into this Agreement and to carry out its obligations hereunder and the execution of this Agreement has been duly authorized by DHL and no other proceedings on the part of DHL are necessary to authorize this Agreement and the undersigned officer of DHL is authorized and empowered to bind DHL to the terms of this Agreement by his signature hereto;
- (c) Neither the execution of this Agreement, nor the acts contemplated hereby, nor compliance by DHL with any provisions of this Agreement,

will violate any charter document, contract, agreement, law, or any judgment, decree, order, regulation or rule of any court or governmental authority with jurisdiction over DHL or any certification requirements of the State of Indiana;

- (d) DHL has, or will have at the time needed for construction of the Project, completed, obtained and performed all necessary registrations, filings, approvals, licenses, authorizations, consents, certification concerning the construction of the Project or examinations required by any government or governmental authority concerning the Project and performance of its acts contemplated by this Agreement, and DHL shall maintain proper authorizations during the Term of the Agreement;
- (e) The personnel of DHL responsible for discharging DHL's duties and obligations under this Agreement are individuals experienced in the matters set forth herein;
- (f) DHL shall carry out its duties and obligations in accordance with the provisions of all applicable ordinances, regulations and laws of all governmental entities with jurisdiction over the transactions contemplated;
- (g) DHL has no authority to act on behalf of the City Parties;
- (h) DHL shall promptly notify the City Parties in writing if any of the representations and warranties of DHL set forth in this Agreement shall cease to be true at any time during the Term of this Agreement;
- (i) DHL has or will have sufficient assets to carry out and complete its obligations with respect to the development, construction and completion of the Project pursuant to this Agreement;
- (j) The provisions of this Section 1.8 shall survive a termination or expiration of this Agreement.

1.8 Representations of the City Parties. City Parties represent and warrant that each entity has full constitutional and lawful right, power and authority, under currently applicable law, to execute and deliver this Agreement upon proper approval by the City and RDC. The performance by each of City Parties of its obligations under this Agreement shall be subject to completion of such procedures as are required by law. City Parties further represent and warrant that they have taken or will use their best efforts to take (subject to DHL's performance of its agreements and obligations hereunder) such action(s) as may be required and necessary to enable City Parties to execute this Agreement and to carry out fully and perform the terms, covenants, duties and obligations on its part to be kept and performed as provided by the terms and provisions hereof.

2. DHL OBLIGATIONS

2.1 In consideration of and as a material inducement for the economic development incentives described in this Agreement and the taking of certain other actions by

the City Parties all as described in Section 3; DHL shall fully satisfy each of the following commitments (individually or collectively, the “DHL Obligations”):

- (a) Acquire the Project Property. DHL shall acquire fee simple title to the Project Property in the name of DHL on or before the Closing Date as described in Section 4;
- (b) Payment to City. DHL shall pay Two Million Dollars and No Cents (\$2,000,000.00) to the City no later than thirty (30) days prior the date bids (pertaining to Section 3.1(b)) are scheduled to be opened by the City, to be used by the City for the payment of costs concerning the construction of certain Road Improvements as described in Section 3 (the “Payment”). Said Payment shall be made by electronic wire transfer pursuant to instructions specified by the City. The Payment shall be held by the City in an escrow account into which the City Parties shall also contribute all remaining funds necessary for the construction of said Road Improvements, (“Road Escrow”). The City shall use the Payment solely to pay costs incurred in connection with the City’s construction of the Road Improvements and shall make disbursements from the Road Escrow in accordance with the City’s standard construction disbursement practices. The City agrees to provide DHL with copies of all documentation associated with its payments from the Road Escrow;
- (c) Completion of Essex Drive. DHL, at it sole expense, shall complete Essex Drive in accordance with and conforming to the standards of the City; and upon completion shall dedicate the same to the City.
- (d) Dedication of Road Right-Of-Way. DHL shall dedicate a portion of the Project Property, which shall not interfere with the construction of the Project, consisting of a strip of land along portions of the perimeter of the Project Property, anticipated to be primarily along the east and north side of the Project Property, which shall be of a size and dimension as reasonably determined by the City for construction of the Road Improvements described in Section 3, which would include but not be limited to eighty (80) feet along the southside of Paul Hand Road (the "Road ROW"). DHL agrees to execute any and all necessary and commercially reasonable documents required to effectuate the dedication of the Road ROW to the City;
- (e) Dedication of Legal Drain Right-Of-Way. DHL shall dedicate a portion of the Project Property, which shall not interfere with the construction of the Project, consisting of a strip of land along portions of the perimeter of the Project Property, anticipated to be primarily along the east side of the Project Property, which shall be of a size and dimension as reasonably determined by the Johnson County Drainage Board and the City for the relocation of the Johnson County Canary Legal Drain Ditch along Graham Road for the construction of the Road Improvements described in Section 3 (the "Legal Drain ROW "). DHL agrees to execute any and all necessary and commercially reasonable documents required to effectuate the dedication of the Legal Drain ROW to the City;

- (f) Other Obligations of DHL. DHL agrees to use its good faith efforts to employ qualified price competitive contracts from businesses located within or near Johnson County, Indiana, and to use its good faith efforts to utilize qualified and competitive contractors and trade organizations located within or near Johnson County, Indiana in the construction of the Project including minority owned and women owned business enterprises.

3. CITY PARTIES INCENTIVES OBLIGATIONS

- 3.1 City Obligations. In consideration of and as a material inducement for DHL satisfying in full the DHL Obligations, the City shall, subject to further proceedings required by the Laws, and subject to DHL acquiring fee simple title to the Project Property as described in Section 2.1(a), and making the Payment as described in Section 2.1(b); the City will use their best efforts to complete the following (the “City Obligations”):
 - (a) To support the Project, the City agrees to design, develop and construct certain infrastructure improvements, at its sole cost and expense after crediting the Payment, of widening of Paul Hand Road, which borders the Project Property on the north side and the construction of a roundabout at the intersection of Paul Hand Road and Graham Road, as generally described on Exhibit “C” attached hereto, (the “Road Improvements”).
 - (b) The City agrees to: (i) begin advertise for bids for the Road Improvements no later than December 15, 2023 ; (ii) notify DHL that the City has bid the work for the Road Improvements within ten (10) business days after soliciting bids; (iii) notify DHL that the City has selected its general contractor for the Road Improvements within ten (10) business days after such selection is made; (iv) promptly thereafter to provide DHL with a good faith estimate of the date the Road Improvements are anticipated to be completed; and (v) to use commercially reasonable efforts to cause the Road Improvements to be bid and completed with a scheduled completion date (the “Anticipated Road Improvements Completion Date”) that is on or about the date the Project is scheduled to be completed.
- 3.2 RDC Obligations. In consideration of and as a material inducement for DHL satisfying in full the DHL Obligations, the RDC shall, subject to further proceedings required by the Laws, and subject to DHL acquiring fee simple title to the Project Property as described in Section 2.1(a), and making the Payment as described in Section 2.1(b); the RDC will use their best efforts to complete the following (the “RDC Obligations”):
 - (a) Upon the confirmation that the City has committed to the construction of the Road Improvements, the RDC hereby commits to consider making an additional appropriation at a future date to pay for any excess

construction costs for the Road Improvements (such amount to be determined at the sole discretion of the RDC) from tax increment revenues collected from the Area. Such appropriation shall be in accordance with Indiana Code 36-7-14-39(b)(3)(J) in addition to all appropriations provided for in the existing budget and shall continue in effect until the completion of the described purposes.

4. CLOSING

- 4.1 DHL shall acquire the Project Property pursuant to Section 2.1(a) and make the payment to the City pursuant to Section 2.1(b), on or before the ___ day of _____ 2023 ("Closing Date") and comply with Section 4.2. If one or more of such conditions is not, completely satisfied, then, as its sole and exclusive remedy, City Parties, may elect to: (i) waive satisfaction of such conditions and proceed with the Agreement; or (ii) terminate this Agreement by a written notice to DHL.
- 4.2 DHL shall deliver or cause to be delivered to the City Parties, at least two (2) business days after the Closing Date the following instruments and documents, the delivery of each of which shall be a condition to the Closing:
- (a) Deed. A Warranty Deed ("Deed") conveying the Real Project Property to DHL that has been recorded with the Johnson County Reorder;
 - (b) Wire Transfer. Confirmation of wire transfer of the Payment from DHL to City;
 - (c) Title Commitment. A "marked-up" title commitment (or pro forma Policy) reflecting the Title Company's commitment to issue the Policy on the terms as described in this Agreement;
 - (d) Other documents as City Parties may reasonably request or as otherwise required by applicable law.

5. TERM OF THE AGREEMENT AND TERMINATION

- 5.1 Term. The term ("Term") of this Agreement, and its effectiveness, shall commence as of the Effective Date and shall continue in full force and effect until the last to occur of (i) DHL completes construction of the Project; or (ii) the City completes the construction of the Road Improvements or (iii) DHL completes all of the DHL Obligations.
- 5.2 Termination. This Agreement may be terminated as follows:
- (a) Termination by Agreement. In the event the Parties shall mutually agree in writing, this Agreement may be terminated on the terms and date stipulated therein.
 - (b) Title/Payment Termination. Termination by the City Parties as described in Section 4.

(c) Termination for Breach

- (i) In the event either Party commits a breach of this Agreement, except as to Section 4.1, the non-breaching Party, may terminate this Agreement by providing the other Party with a thirty (30) day written notice of intent to terminate as a result of the breach;
- (ii) Provided, however, the breaching Party shall have said thirty (30) day period in which to effect a cure of the breach, which, if cured within said thirty (30) day period, shall cause this Agreement to continue in full force and effect. Otherwise, this Agreement shall terminate thirty (30) days from the date of the notice of intent to terminate sent by the non-breaching Party; Before any failure of any party to perform its obligations under this Agreement shall be deemed to be a breach of this Agreement, the non-breaching party shall notify the breaching party in writing, specifying the alleged breach and demanding a cure.
- (iii) No breach of this Agreement may be found to have occurred if the breaching party has commenced a cure of the alleged breach within thirty (30) days of the receipt of such notice and diligently proceeds to cure said alleged breach. If after said notice, the breaching party fails to cure the alleged breach within a reasonable time, the same shall constitute a breach of this Agreement. In the event of a breach by either party, the non-breaching party may terminate this Agreement and recover from the breaching party the direct out-of-pocket expenses incurred by the non-breaching party as a result of such breach, including attorney fees and court costs, which shall be the non-breaching party's sole remedy at law or in equity.
- (iv) Notwithstanding anything to the contrary, in the event the City fails to complete the Road Improvements, DHL shall have the sole option of (i) completing the Road Improvements and recovering any costs relating thereto from the City; or (ii) terminating the Agreement.

6. INDEMNIFICATION BY DHL

- 6.1 DHL shall indemnify and hold harmless the City Parties from and against any and all claims arising from or connected with: (i) breaches by DHL under agreements to which DHL is a party, to the extent that such agreements relate to the performance of any work on the Project Property by DHL or any party acting by, under, through, or on behalf of DHL; (ii) injury to, or death of, persons or loss of, or damage to, property, suffered in connection with performance of any work on the Project Property by DHL or any party acting by, under, through, or on behalf of DHL ; (iii) the negligence or willful misconduct of DHL or any party acting by, under, through, or on behalf of DHL; (iv) DHL suffering or causing the filing of any mechanic's or materialmen's lien against the Project Property; (v)

Project Property inspections conducted by DHL; or (vi) the breach by DHL of any term or condition of this Agreement.

- 6.2 The City shall indemnify and hold harmless DHL from and against any and all claims arising from or connected with: (i) breaches by the City under agreements to which the City is a party other than this Agreement, to the extent that such agreements relate to the performance of any work on the Road Improvements by the City or any party acting by, under, through, or on behalf of the City; (ii) injury to, or death of, persons or loss of, or damage to, property, suffered in connection with performance of the any work on the Road Improvements by the City or any party acting by, under, through, or on behalf of the City; or (iii) the negligence or willful misconduct of the City or any party acting by, under, through, or on behalf of the City.
- 6.3 Notwithstanding anything to the contrary set forth herein, the Parties' obligations under this Section shall survive the termination of this Agreement.

7. E-VERIFY PROGRAM.

- 7.1 DHL: (i) shall verify the work eligibility status of all newly hired employees through the E-Verify Program; and (ii) shall not: (A) knowingly employ, or contract with, an Unauthorized Alien; or (B) retain an employee, or contract with a person, that DHL learns is an Unauthorized Alien. To the extent required by IC §§22-5-1.7, DHL shall require its contractor and each subcontractor to certify to DHL that, at the time of certification, the contractor or such subcontractor: (i) does not knowingly employ, or contract with, any Unauthorized Aliens; and (ii) has enrolled, and is participating, in the E-Verify Program. DHL shall maintain such certifications on file until the construction contract or the applicable subcontract expires or is terminated. DHL is and shall be in compliant with the E-Verify Program as defined by Indiana Code 22-5-1.7-3; ("Program")

8. IRAN REPRESENTATIONS

- 8.1 DHL represents and certifies that it is not engaged in investment activities in Iran and that DHL is not listed on the list published and/or endorsed by the State of Indiana pursuant to Ind. Code § 5-22-16.5-9 as a DHL engaged in investment activities with Iran. Pursuant to Ind. Code § 5-22-16.5-8, a firm is considered to be engaging in investment activities with Iran if: 1) it has provided good or services of Twenty Million Dollars (\$20,000,000.00) or more in value in the energy sector of Iran, including oil or liquefied natural gas tankers or produces used to construct or maintain pipelines used to transport oil or liquefied natural gas; or 2) has extended Twenty Million Dollars (\$20,000,000.00) or more in credit to another party, for forty-five (45) days or more, if that other party will use the credit to provide goods or services in the energy sector in Iran and is, at the time credit is extended, is identified on the list developed by the State of Indiana of parties it has determined to be engaged in investment activities in Iran.

9. FEDERAL AND STATE REQUIREMENTS

- 9.1 Discrimination. DHL will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. DHL will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship.

10. **NOTICE**

- 10.1 All notices, requests, demands and other communications that are required or permitted to be given pursuant to the terms of this Agreement shall be in writing, and delivery shall be deemed sufficient in all respects and to have been duly given as follows: (a) on the actual date of service if delivered personally; (b) at the time of receipt of confirmation by the transmitting Party if by facsimile transmission; (c) on the third (3rd) day after mailing if mailed by first class mail return receipt requested, postage prepaid and properly addressed as set forth in this Section 10; or (d) on the day after delivery to a nationally recognized overnight courier service during its business hours or the Express Mail service maintained by the United States Postal Service during its business hours, in each case, for overnight delivery against receipt, and properly addressed as set forth in this Section 10 as follows:

City:

City of Franklin
Mayor
70 East Monroe Street
Franklin, IN 46131

With copy to:

Lynnette Gray
City Attorney
Johnson, Gray and Johnson
63 East Court Street
Franklin, Indiana 46131

RDC:

Franklin Redevelopment Commission
c/o President
70 East Monroe Street
Franklin, Indiana 46131
Phone No: 317-736-3631
Email: klinke@franklin.in.gov

With copy to:

Franklin Redevelopment Commission
c/o Community Development Director
70 East Monroe Street
Franklin, Indiana 46131
Phone No: 317-736-3631

Dustin D. Huddleston
Franklin Redevelopment Commission Counsel
Huddleston & Huddleston
98 West Jefferson Street
Franklin, Indiana 46131

DHL:

Exel Inc. dba DHL Supply Chain (USA)
360 Westar Boulevard, Westerville, Ohio 43802
Barbara J. Jordan, Associate General Counsel

With copy to:

Bryan B. Woodruff
Bose McKinney & Evans LLP
11 Monument Circle, Suite 2700
Indianapolis, Indiana 46204

11. ENTIRE AGREEMENT; AMENDMENT

- 11.1 The written terms and provisions of this Agreement shall supersede all prior verbal statements of any officer or other representative of the City Parties or DHL and such statements shall not be effective or be construed as entering into or forming a part of, or altering in any manner whatsoever, this Agreement;
- 11.2 This Agreement contains and constitutes the entire agreement of the Parties regarding the subject matter hereof, and there are no other agreements, written or oral, between the Parties affecting the subject matter hereof;
- 11.3 No amendment of this Agreement shall be effective unless the same is made in writing and signed by the Parties hereto.

12. SEVERABILITY

- 12.1 Any provision of this Agreement prohibited by law or invalid under any law shall be ineffective only to the extent of such prohibition, without in any manner invalidating or affecting the remaining provisions of this Agreement such provisions being deemed severable.

13. ASSIGNMENT

- 13.1 Upon Closing, this Agreement shall run with the Project Property and shall be binding on successors in title to the Project Property. No party hereto shall assign

this Agreement without the prior written approval of the other parties; provided that: (a) without the prior written approval of DHL, City Parties may assign this Agreement to another agency or instrumentality of the City Parties that legally is able to perform the respective obligations hereunder; and (b) without the prior written approval of City Parties, DHL may: (i) assign, partially or in its entirety, this Agreement to a third party controlled by or under common control with DHL and/or any subsidiary or affiliate of DHL that has full power, authority, and capability to accept such assignment and perform the obligations of DHL hereunder; and (ii) execute and deliver the necessary documents.

13.2 Except as provided in Section 13.1 above, during the period between Closing and completion of not less than one (1) building at the Project, DHL shall not assign this Agreement, or sell any portion of the Project Property, without the prior written approval of the City Parties, which approval may be conditioned on the proposed assignee or purchaser assuming in writing the obligations of DHL that remain with respect to the Project;

13.3 Notwithstanding any assignment permitted under this Section 13, the applicable City Parties or DHL, as the case may be, shall remain liable to perform all of the terms and conditions to be performed by it under this Agreement, and the approval by the other party of any assignment shall not release any City Parties or DHL, as the case may be, from such performance; provided that, if either City Parties assign this Agreement to another agency or instrumentality of City Parties that: (a) has full power and authority to accept an assignment of this Agreement and carry out the respective obligations hereunder; and (b) expressly assumes all such obligations in writing; then the applicable City Parties shall be released from liability under this Agreement for all obligations to be performed after the date of such assignment and assumption.

14. GOVERNING LAW; CONSTRUCTION

14.1 This Agreement shall be interpreted and enforced according to the laws of the State of Indiana;

14.2 The Parties hereby agree that all actions or proceedings initiated by either Party arising directly or indirectly out of this Agreement shall be litigated in the circuit or superior court of Johnson County, Franklin, Indiana, or the United States District Court for the Southern District of Indiana. Each Party hereby expressly submits and consents in advance to such jurisdiction in any action or proceeding commenced by either Party in any of such courts, and hereby waives personal service of the summons and complaint, or other process or papers issued therein, and agrees that service of such summons and complaint or other process or papers may be made by registered or certified mail addressed to the Party at the address to which notices are to be sent pursuant to the Agreement. Each Party waives any claim that Johnson County, Franklin, Indiana, or the Southern District of Indiana is an inconvenient forum or an improper forum based on lack of venue;

- 14.3 All headings of sections of this Agreement are inserted for convenience only, and do not form part of this Agreement or limit, expand or otherwise alter the meaning of any provisions hereof;
- 14.4 This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same Agreement;
- 14.5 The terms "hereof", "herein" and "hereunder", and words of similar import, shall be construed to refer to this Agreement as a whole, and not to any particular paragraph or provision, unless expressly so stated;
- 14.6 The word "person" shall mean any natural person, partnership, limited liability company, corporation and any other form of business or legal entity;
- 14.7 All words or terms used in this Agreement, 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;
- 14.8 The provisions of this Agreement are intended to be for the sole benefit of the Parties hereto, and their respective successors and assigns, and none of the provisions of this Agreement are intended to be, nor shall they be construed to be, for the benefit of any third party;
- 14.9 This Agreement shall be construed without regard to any presumption or rule requiring construction against the Party causing such instrument to be drafted;
- 14.10 Each and every provision of law and governmental regulation required by law to be inserted in the Agreement such as this shall be deemed to be inserted herein or therein and this Agreement shall read and shall be enforced as though so included therein, and if through mistake, inadvertence or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either Party, this Agreement shall be deemed to be amended to make such insertion or correction.

15. FORCE MAJEURE

- 15.1 Notwithstanding anything to the contrary set forth herein, if any Party is delayed in, or prevented from, observing or performing any of its obligations (other than the obligation to of DHL described in Section 2.1(b)) under, or satisfying any term or condition of, this Agreement as a result of Force Majeure; then: (a) the Party asserting Force Majeure shall deliver written notice to the other Party; (b) such observation, performance, or satisfaction shall be excused for the period of days that such observation, performance, or satisfaction is delayed or prevented; and (c) the deadlines for observation, performance, and satisfaction, as applicable, shall be extended for the same period. The Parties acknowledge the ongoing COVID-19 pandemic, and agree: (a) to exercise commercially reasonable, good-faith efforts to: (i) consider all then-current information with respect to; and (ii) adjust for shortages that reasonably can be anticipated with respect to materials, equipment, services, and/or labor that reasonably are likely to occur as a result

of; the COVID-19 pandemic; and (b) that, notwithstanding that the COVID-19 pandemic falls within the definition of "Force Majeure", the protections of this Section shall not apply to a claim of Force Majeure based on COVID-19 if the applicable Party fails to comply with the foregoing requirement.

16. COUNTERPARTS

16.1 This Agreement and any amendments, waivers, consents or supplements may be executed in any number of counterparts and by different Parties hereto in separate counterparts, each of which, when so executed and delivered, shall be deemed an original, but all of which counterparts together shall constitute but one Agreement.

17. ELECTRONIC APPROVAL

17.1 This Agreement together with any document contemplated to be executed in connection herewith may be transmitted between the Parties electronically or digitally. The Parties intend that electronically or digitally transmitted signatures constitute original signatures and are binding on the Parties. The original documents shall be promptly executed and/or delivered.

IN WITNESS WHEREOF, the Parties have executed this Agreement, the day and year indicated below.

City:

CITY OF FRANKLIN, BOARD OF WORKS AND
SAFETY, FRANKLIN INDIANA

Steve Barnett, Mayor

Dated: _____

Kenneth Austin, Member

Dated: _____

Tina Gross, Member

Dated: _____

Attest:

RDC:

FRANKLIN REDEVELOPMENT COMMISSION

By: _____

Richard Wertz, President

Dated: _____

DHL:

Exel Inc. dba DHL Supply Chain (USA)

By: _____

Printed: _____

Title: _____

Dated: _____

Jayne Rhoades, Clerk-Treasurer

Dated: _____