

ECONOMIC DEVELOPMENT AGREEMENT

Between

**Redevelopment Commission of the City of Franklin, Indiana
and
G&H Wire Company, Inc.**

for

Build-out, Purchase, and Lease of Shell Building No. 2

This Economic Development Agreement (the “Agreement”) is entered into as of the ____ day of March, 2021 (the “Effective Date”), by and between the **Redevelopment Commission of the City of Franklin, Indiana (“RDC”)**, as the governing body of the City of Franklin, Indiana Redevelopment District, and **G&H Wire Company, Inc. (“G&H”)**, a Delaware company. (Collectively, the RDC and G&H are the “Parties”).

RECITALS

WHEREAS, the RDC is the owner of certain real property and improvements (the “Property”) commonly known as Shell Building No. 2, and more particularly known as Lot Numbered 1, Tract 1 in Linville Business Park Secondary Plat, an addition to the City of Franklin, Indiana as recorded in Plat Cabinet E, page 320 A, B, & C in the Office of the Recorder of Johnson County, Indiana, consisting of a partially-completed 51,370 sq. ft. shell building located on approximately thirteen (13) acres. This property was purchased and developed in order to attract a commercial end-user who could make substantial additional investment, pay good wages and provide good benefits to its employees, and contribute to the community and local economy.

WHEREAS, where G&H proposes to lease, occupy, cause the improvement of, equip, and use the Property for its orthodontic design and manufacture operations (the “Project”), where it will (i) bring additional capital investment to the City’s Economic Development Area (“Area”); (ii) return underutilized and vacant space in the Area to its highest and best use; (iii) be of public utility and benefit as measured by the creation and retention of full time jobs; and (iv) 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, Patch Development LLC (“Patch”) has offered to purchase the Property from the RDC for the sum of approximately Three Million Dollars (\$3,000,000.00), and then lease the Property to G&H for a fifteen (15) years term.

WHEREAS, in order to induce G&H to lease the Property from Patch, the RDC is willing to provide financial assistance for the Project in accordance with the terms and conditions provided within this Agreement.

WHEREAS, entering into this Agreement and providing funds to induce G&H to undertake the Project and continue future Project operations in the Area fosters and encourages economic development, promotes the use of the Property in a manner that best serves the interest of the City and its citizens, and promotes significant opportunities for gainful employment, all of which help the RDC accomplish its statutory purposes.

NOW THEREFORE, in consideration of the terms and conditions contained in this Agreement, the RDC and G&H agree as follows:

1. \$100,000 TIF Incentive. The RDC agrees to purchase for G&H's use One Hundred Thousand Dollars' worth of Project-related personal property investments (the "TIF Incentive") in exchange for G&H agreeing to expeditiously pursue and complete the Project. The TIF Incentive may be paid for any personal property investment made by G&H in furtherance of the Project as defined in Exhibit A – Eligible Expenditures. G&H acknowledges the RDC must comply with Indiana's public purchasing rules as provided in Indiana Code 5-22 *et seq.*, and agrees to cooperate with the RDC to that end. For purposes of this agreement, G&H is the RDC's designated Purchasing Agent, and is authorized to act as the RDC's agent in the administration of the duties of the RDC under this agreement relative to the purchase and disposition of the personal property investment. Once G&H submits to the RDC a written itemization describing its personal property investments planned or made in furtherance of the Project and other relevant requested information, as well as a sworn, written statement that it has: (a) entered into a lease of the Property for no less than ten (10) years; (b) invested at least Two Hundred Fifty Thousand Dollars (\$250,000.00) in additional personal property necessary to operate at the Property; and (c) has a workforce of at least one hundred fifty employees in Franklin, Indiana, and upon approval of same by the RDC, the RDC will pay for the purchase and/or reimburse G&H accordingly, and will simultaneously cause the release, disposal, and transfer of its interest in same to G&H.

2. Good Faith Purchasing Commitment. G&H agrees to make commercially reasonable efforts to purchase supplies and materials from or make bidding opportunities available to qualified, price-competitive suppliers located or residing in the City of Franklin.

3. Compliance Report. G&H agrees to file a written Report ("Report") with the RDC by the end of calendar year 2021 as follows:

3.1. The written Report shall include the following:

3.1.1. The amount caused to be invested in the improvement of the Property.

3.1.2. The amount invested in taxable personal property.

3.1.3. To the extent reasonably obtainable, the number of full-time equivalent employees employed on the Property at the time of the Report filing.

3.1.4. To the extent reasonably obtainable, the average hourly wage (with salaried positions converted to hourly wage) of the employees employed on the Property at the time of the Report filing.

3.1.5. Whether any portion of G&H's operations has closed or been transferred to a location outside of Franklin, Indiana.

3.1.6. The general status of and future expectations for the Project.

3.1.7. A certification of the accuracy of the information provided, to be signed by the highest executive officer of G&H as follows: "I hereby certify, subject to the penalties for perjury, that, after due inquiry, I have personal knowledge of the subject matter covered by this Report and that the representations in this Report are to my knowledge true in all material respects."

4. Tax Abatements. Patch and G&H are permitted to seek to be exempt from real and personal property taxes that may be assessed relative to the Property.

5. Representations and Warranties of G&H. G&H represents and warrants to the RDC as follows:

5.1. It is duly organized and validly existing under the laws of the State of Delaware, and is qualified to do business in Indiana, and this Agreement is a legal, valid, and binding obligation and enforceable against G&H in accordance with its terms.

5.2. Its execution, delivery, and performance of the Agreement are within its corporate or entity powers, have been duly authorized by all necessary corporate or entity action, and do not (i) conflict with, or result in a breach of, any provision of its Articles of Incorporation and Bylaws, or similar entity documents; (ii) require any approval or consent of any other person (including, without limitation, any shareholder); (iii) contravene any law, rule, or regulation of the State of Indiana or of the United States, or any order, writ, judgment, injunction, decree, determination, or award presently in effect that affects or binds it or any of its properties; (iv) conflict with or result in a breach of or default under any indenture, loan, credit agreement, or any other agreement or instrument to which it is a party in respect of indebtedness for money borrowed; or (v) result in the creation or imposition of any lien, security interest, or other charge or encumbrance upon any of its properties pursuant to any such indenture, agreement, or instrument, except pursuant to or as permitted by the Agreement.

5.3. It has received no notice of any action, suit, or proceeding at law or equity, or before or by any federal, state, local, or other governmental departments, commission, board, bureau, agency, or instrumentality, domestic or foreign, pending or threatened against it or its properties that, if determined adversely, would be a material adverse occurrence, and it is not in default with respect to any final judgment, writ, injunction, decree, rule, or regulation of any court or federal, state, local, or other governmental department, commission, board, bureau, agency, or instrumentality, domestic or foreign, that constitutes a material adverse occurrence.

6. Additional Duties of G&H. G&H agrees that until the full expenditure of the TIF Incentive, it shall:

6.1. Promptly pay and discharge all taxes, assessments and governmental charges which may be lawfully levied, assessed or imposed upon the Property, or upon their income or profits, and all lawful and undisputed claims for labor, material and services which, if unpaid, might become a lien or charge against the Property. G&H's commitments under this paragraph are limited to the time during which G&H is a tenant at the Property.

6.2. Permit with reasonable notice any authorized representative of the RDC, including but not limited to its attorneys and inspectors, to enter upon and inspect and examine

the Property at reasonable times during normal business hours utilizing safe construction area precautions.

6.3. Give prompt written notice to the RDC of any process or action taken or pending whereby a third-party is asserting a material claim against their assets; and

6.4. Pay when due all liabilities, including trade accounts, in accordance with regular terms, except for claims contested in good faith by appropriate proceedings.

7. Representations, Warranties, and Covenants of the RDC.

7.1. The RDC represents and warrants, subject to all applicable legal requirements, as of the date hereof, that (i) it has the requisite power, right and legal authority to execute, deliver and perform its obligations under this Agreement and have taken all action necessary to authorize the execution, delivery, performance and observance of their obligations under this Agreement, and (ii) this Agreement, when executed and delivered by duly authorized representatives of the RDC, will constitute the legal, valid and binding obligation of the RDC, enforceable against the RDC in accordance with its terms.

7.2. The RDC covenants and agrees to take or cause to be taken (and shall cooperate with the G&H to enable it to take or cause to be taken) all actions reasonably necessary under statutes, regulations and rules applicable to the Project, and to execute and deliver or cause to be executed and delivered such documents as may be reasonably necessary under such statutes, regulations and rules, to assist and permit the G&H to undertake and complete the Project.

8. Events of Default.

8.1. Any one (1) or more of the following which occur during the term of this Agreement and prior to full expenditure of the TIF Incentive, and which are not cured after reasonable notice and opportunity to cure, shall constitute an "Event of Default" hereunder:

8.1.1. Dissolution, liquidation, or termination of the business of G&H; assignment for the benefit of its creditors; appointment of a receiver or a trustee for it or any of its assets, which appointment is consented to or, if not consented to, is not removed or discharged within sixty (60) days after such appointment; or the filing by either of them of a petition for relief under the United States Bankruptcy Code, which petition is consented to, or, if involuntary, remains un-dismissed for sixty (60) days after such filing; and

8.1.2. Material breach of a duty or obligation imposed by the terms of this agreement.

9. Suspension of Obligations Upon Uncured Event of Default.

9.1. Upon an uncured Event of Default, the RDC may suspend its obligation to fund any further payments or approve any disbursements otherwise provided for hereunder.

9.2. Upon an uncured Event of Default by the RDC, G&H may suspend its obligations to perform under the terms of this agreement.

10. 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 (and, in the case of the RDC, the adoption of an additional appropriation resolution for the TIF Incentive), copies of which will be provided to all Parties, as may be 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.
11. Submission of disagreements to mediation. In the event the Parties disagree as to any material matter (such as but not limited to whether a default has occurred, whether one Party has a duty to act or a duty to refrain from acting, or whether an ambiguity exists as to the scope and terms of the Parties' agreements), the dispute will be submitted to non-binding mediation under the Indiana rules of alternative dispute resolution.
12. Breach: Before any failure of any Party of this Agreement to perform its obligations under this Agreement shall be deemed to be a breach or default of this Agreement, the Party claiming such failure shall notify, in writing, the Party alleged to have failed to perform such obligation and shall demand performance. No breach or default of this Agreement may be found to have occurred if performance has commenced to the reasonable satisfaction of the complaining Party within thirty (30) days of the receipt of such notice. If after said notice, the breaching Party fails to cure the breach, the non-breaching Party may seek any remedy available at law or equity, subject however to compulsory non-binding mediation.
13. Remedies and Boilerplate. All remedies shall be reasonably tailored to alleviate actual damage, and not cause forfeiture of value nor a loss to one Party disproportionate to the amount required to remedy actual harm to the other Party. Protective boilerplate provisions will be interpreted to be bilateral.
14. Satisfaction and Discharge. Upon full expenditure of the TIF Incentive, the RDC's obligations under this Agreement shall be fully satisfied and discharged.
15. Cumulative Rights and Remedies. All rights and remedies of the Parties herein specified are cumulative and in addition to, and not in limitation of, any rights and remedies that the Parties may have pursuant to the Agreement, by law or in equity, or otherwise.
16. Notices. All notices required or permitted to be given hereunder shall be in writing and delivered either in person, by a nationally recognized overnight delivery carrier, or by certified mail, return receipt requested, with additional copy delivered by email, if such delivery information is known by the sender, to the Parties at their respective addresses set forth below, or at such other address as notice of which may have been given to the other Party.

To the 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
Email: klinke@franklin.in.gov

Robert H. Schafstall, Attorney
Schafstall and Admire, LLP
98 N. Jackson Street
Franklin, Indiana 46131
Phone No: 317-736-7146
Email: rob@schafstalladmire.com

To G&H:

Charlie Wemhoff
Vice President, Operations
cwemhoff@ghortho.com
2900 Graham Rd. Suite D, Franklin, IN 46131
317-346-6655

Any notice given in accordance with this Section shall be deemed to have been duly given or delivered: (a) on the date the same is personally delivered to the recipient as evidenced by a duly acknowledged written receipt; (b) on the date the same is received by the recipient as evidenced by the returned postal receipt; (c) on the date the recipient delivers a non-automated email message acknowledging receipt of the notice by email or otherwise; or (d) on the date following the day the notice is timely delivered to a nationally recognized overnight delivery carrier for delivery on the next business day.

17. Miscellaneous.

17.1. Entire Agreement. This Agreement, together with all agreements referenced herein and any other certificates and documents executed in conjunction herewith, constitutes the entire agreement of the Parties and supersedes any and all prior agreements, arrangements,

and understandings relating to the subject matter hereof. All recitals herein and exhibits, schedules and related agreements attached hereto are incorporated herein by this reference and expressly made a part of this Agreement. Neither this Agreement, nor any term hereof, may be changed, modified, altered, waived, discharged, or terminated, except by written instrument executed by both Parties.

17.2. Binding Agreement. This Agreement shall bind and inure to the benefit of the Parties and their respective legal representatives, heirs, successors, and assigns.

17.3. Other Entities. This Agreement will be non-assignable without the consent of the RDC. The RDC agrees that G&H may enter agreements with and utilize or partner with other entities which are wholly owned by them, or wholly owned by their owners (such entities known as "Affiliate Entities") to: (a) work on the Project development; (b) hold the Property title and serve as lessor of the Property; and (c) hold the assets and operate the business of the lessee. In addition, the RDC agrees that G&H may assign this Agreement in connection with the sale or merger of G&H or of all (or substantially) all of its assets.

17.4. Duplicates. This Agreement shall be executed in at least two (2) duplicates, with at least one originally executed version for each Party. This Agreement may be executed in any number of counterparts, but all of such counterparts together shall constitute one and the same Agreement. For purposes of this Agreement, signatures by facsimile (including e-mail with a .pdf copy of the executed instrument attached) shall be binding to the same extent as original signatures. When a counterpart is delivered by facsimile, the original shall be delivered promptly after delivery of the facsimile counterpart.

17.5. Headings. The section headings and titles herein are solely for the convenience of reference and shall be given no effect in the construction or interpretation of this Agreement.

17.6. Amendment. Neither this Agreement, nor any term hereof, may be changed, modified, altered, waived, discharged, or terminated, except by written instrument.

17.7. No Waiver Provision. Except as expressly set forth herein to the contrary, no waiver of any provision of this Agreement shall be deemed to have been made unless expressed in writing and signed by the Party charged therewith. Failure to insist upon strict adherence to any term of this Agreement shall not be considered a waiver or deprive that Party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.

17.8. Time of Essence. Time is of the essence in this Agreement. The Parties shall have the right to treat all time deadlines contained or referenced in this Agreement as material and to exercise such remedies as may be provided in this Agreement, at law, in equity, or otherwise, in the event such time deadlines are not met.

17.9. Computation of Time. In computing a time period prescribed in this Agreement, the day of the act or event shall not be counted. All subsequent days, including intervening weekend days and holidays, shall be counted in the period. The last day of the period so computed is to be included unless it is a weekend day or a legal holiday under Indiana law, in which case the period shall be extended to the next day that is not a weekend day or legal holiday.

17.10. Severability. If any provision of this Agreement is found to be invalid, illegal, or unenforceable, the balance of this Agreement shall remain in full force and effect, and if any provision herein is held to be inapplicable to any person or circumstance, it shall nevertheless remain applicable to all other persons and circumstances, unless the result thereof would result in an unjust modification of the balance of rights and obligations hereunder.

17.11. Governing Law. This Agreement shall be governed by and construed exclusively in accordance with the laws of the State of Indiana. The Parties hereto: (a) irrevocably consent to the exclusive jurisdiction of the courts of the State of Indiana; and (b) irrevocably waive any and all objections to such consents. Each Party shall be responsible for its own legal expenses for review of this Agreement or in pursuit of any claim related to or arising under it.

17.12. Consents. No consent, agreement, or approval shall be effective unless in writing signed by the Party from whom such consent, agreement, or approval is required.

17.13. Interpretation. The Agreement shall be liberally construed to accomplish the intent and purpose of the Agreement. When applicable, use of the singular form of any word shall mean or apply to the plural.

17.14. No Agent Liability. No official, director, officer, employee or agent of the Parties shall be charged personally by the other Parties, their employees or agents, with any liabilities or be held personally liable to either of them 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.

17.15. Review by Counsel. The Parties acknowledge that each has had the opportunity to be represented by counsel in this matter, and, for purposes of the rule of contract interpretation that construes a document against its drafter, the Parties agree that neither Party nor its counsel shall be considered the drafter hereof.

17.16. No Third-Party Benefit. Nothing herein expressed or implied is intended to confer on any person other than the Parties hereto or their respective successors, assigns, and legal representatives, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

17.17. Additional Documents. The Parties hereto shall execute and deliver any and all consents, releases, authorizations, transfers and other documents as may be reasonably required to carry out the provisions of this Agreement and to fully accomplish its purposes and intents.

17.18. No Partnership/Joint Venture. It is hereby acknowledged by the Parties that the relationship between and among them created hereby and by any other document executed in connection with this Agreement is that of donor and donee, and is not intended to be and shall not in any way be construed to be that of a partnership or a joint venture.

17.19. Force Majeure. Each Party shall be excused for any delay in performing any of its obligations under this Agreement, if such delay is caused by an event of Force Majeure. "Force Majeure" shall mean any act of God; any accident (including equipment failure, HVAC

failure or electricity outage for extended periods of time, utility outages or utility connection failures or delays, or destruction or damage to equipment not caused by the Party relying upon such circumstance or event); any explosion; any fire, flood, ice, earthquake, lightning, tornado or other severe weather condition or calamity; any civil disturbance, labor dispute or labor or material shortage; any sabotage or act (or specific, imminent threatened act) of terrorism; any act of a public enemy, uprising, insurrection, civil unrest, war or rebellion; or any action or restraint by court order or public or governmental authority or lawfully established civilian authorities. In an event of Force Majeure, an extension of time equal to one day for each day of delay due to Force Majeure shall be provided.

IN WITNESS WHEREOF, the RDC and G&H have caused this Agreement to be executed by their authorized officers and/or representatives, all as of the date first above-written.

G&H Wire Company, Inc.

By: _____
Printed: _____
Title: _____

By: _____
Printed: _____
Title: _____

**RDC
CITY OF FRANKLIN, BY AND THROUGH THE
FRANKLIN REDEVELOPMENT COMMISSION**

By: _____
Richard Wertz, President

By: _____
Brian J. Deppe, Secretary

Exhibit A

“Eligible Expenditures” Includes the following Cost Categories:

Personal Property

Manufacturing Equipment

Warehouse Equipment

IT Equipment

Summary report: Litera® Change-Pro for Word 10.10.0.103 Document comparison done on 3/8/2021 1:58:49 PM	
Style name: IM Default	
Intelligent Table Comparison: Active	
Original DMS: nd://4849-8309-9359/1/G&H Economic Development Agreement with Franklin (2021).docx	
Modified DMS: nd://4849-8309-9359/2/G&H Economic Development Agreement with Franklin (2021).docx	
Changes:	
<u>Add</u>	53
<u>Delete</u>	51
<u>Move From</u>	0
<u>Move To</u>	0
<u>Table Insert</u>	0
<u>Table Delete</u>	0
<u>Table moves to</u>	0
<u>Table moves from</u>	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	104