

ORDINANCE 2022-01

AN ORDINANCE AUTHORIZING AND DIRECTING THE MAYOR OF THE VILLAGE OF COMMERCIAL POINT TO ENTER INTO A COMMUNITY REINVESTMENT AREA PARTIAL ASSIGNMENT AND ASSUMPTION AGREEMENT BETWEEN K-NOVA, LLC, AND IDI RICKENBACKER G1, LLC, AS TO LOT 9 IN THE RICKENBACKER EXCHANGE – PART 3 DEVELOPMENT, AND DECLARING AN EMERGENCY.

WHEREAS, to encourage economic development, the Village, pursuant to Ordinance No. 2018-13, adopted by Council on December 3, 2018, and affirmed in Resolution No. 17-2019, adopted by Council on April 1, 2019 (collectively, the "CRA Legislation"), established the area specified in the CRA Legislation as the Commercial Point Community Reinvestment Area No. 1 under the authority of Ohio Revised Code Sections 3735.65 through 3735.70; and

WHEREAS, on or about November 21, 2019, K-Nova, LLC (the "Developer") and the Village entered into the CRA Agreement, concerning the development of a commerce center with related site improvements, at the Project Site as defined in the CRA Agreement (as particularly described in Exhibit A to the CRA Agreement); and

WHEREAS, Developer has acquired that certain real property located within the Village and the CRA, which is identified in the CRA Agreement as the Project Site; and

WHEREAS, the Developer intends to convey or has conveyed a part of the Project Site consisting of approximately 106.59 acres (such transferred property, which is described in Exhibit A-2 to the CRA Partial Assignment and Assumption Agreement (CRA Agreement) attached as Exhibit A to this Ordinance, and depicted as "Lot 9, Rickenbacker Exchange Part 3," may be referred to hereinafter as the "Transferred Property") to IDI Rickenbacker G1, LLC ("Successor"); and

WHEREAS, in connection with the conveyance of the Transferred Property by the Developer to the Successor, the Successor wishes to obtain the benefits of the CRA Agreement effective on the date of the conveyance of the Transferred Property to the Successor (the "Transfer Date"), and, as agreed in the CRA Agreement, the Village is willing to make these benefits available to the Successor on the terms set forth in the CRA Agreement as long as the Successor executes this Agreement and the Developer acknowledges its continued obligations under the CRA Agreement; and

WHEREAS, the Village wishes to enter into a Partial Assignment and Assumption Agreement (CRA Agreement) with K-Nova, LLC, and IDI Rickenbacker G1, LLC in substantially the same form as the attached Exhibit A to this Ordinance, in order to continue to promote economic development opportunities within the Village, including the creation and retention of employment opportunities within the Village.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF COMMERCIAL POINT, OHIO THAT:

Section 1. Authorization and Direction for Mayor to Enter into Partial Assignment and Assumption Agreement (CRA Agreement). The Mayor of the Village of Commercial Point, for and in the name of the Village, is hereby authorized and directed to enter into the Partial Assignment and Assumption Agreement (CRA Agreement) as to Lot 9 in the Rickenbacker Exchange – Part 3 development in substantially the same form and on substantially the same terms as attached hereto as Exhibit A and incorporated herein by reference.

Section 2. Open Meetings Certification. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and of any other committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 3. Emergency Declaration; Effective Date. Because the Partial Assignment and Assumption Agreement (CRA Agreement) must be executed to facilitate the development of the Transferred Property, which development must commence promptly in order to enable IDI Rickenbacker GI, LLC to pursue without delay competitive opportunities, this Ordinance is hereby declared to be an emergency measure necessary

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for the immediate preservation of the public peace, health, and safety in the Village of Commercial Point and shall, therefore, go into effect immediately upon passage.

Vote on Suspension of the Readings:

Motion by: Tracy Joiner 2nd: Ross Crego

Roll Call:

Yes Nancy Geiger Yes Tracy Joiner Yes Jason West
Yes Ross Crego Yes Ryan Mitchem Yes Laura Wolfe

Vote on Passage of the Ordinance:

Motion by: Tracy Joiner 2nd: Jason West

Roll Call:

Yes Nancy Geiger Yes Tracy Joiner Yes Jason West
Yes Ross Crego Yes Ryan Mitchem Yes Laura Wolfe

Adopted this 3rd day of January, 2022.


Allan D. Goldhardt, Mayor


Wendy Hastings, Fiscal Officer

Approved as to Form:


Joshua Cartee, Village Solicitor

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Exhibit A

**PARTIAL ASSIGNMENT AND
ASSUMPTION AGREEMENT (CRA AGREEMENT)**

This PARTIAL ASSIGNMENT AND ASSUMPTION AGREEMENT (the “Agreement”) is made and entered into by and between the Village of Commercial Point (the “Village”), an Ohio municipal corporation, through the Village of Commercial Point Village Council (the “Council”); K-NOVA LLC, an Ohio limited liability company (the “Developer”) and IDI Rickenbacker G1, LLC, a Delaware limited liability company (the “Successor”). Except as otherwise provided herein, capitalized terms used herein shall have the same meanings as in the Community Reinvestment Area Agreement between the Developer and the Village, made effective November 21, 2019 (the “CRA Agreement,”) a copy of which is attached hereto as Exhibit A-1 and incorporated herein.

WITNESSETH:

WHEREAS, pursuant to Ohio Revised Code (“R.C.”) Sections 3735.65 through 3735.70 (the “CRA Act”), the Village, by Ordinance No. 2018-13, adopted by the Council on December 3, 2018 and affirmed by Resolution No. 17-2019 (collectively, the “CRA Legislation”), designated the area specified in the CRA Legislation as the Commercial Point Community Reinvestment Area No. 1 (the “CRA”) and authorized real property tax exemption for the construction of new structures and the remodeling of existing structures in the CRA in accordance with the CRA Act; and

WHEREAS, on or about November 21, 2019, the Developer and the Village entered into the CRA Agreement, concerning the development of a commerce center with related site improvements, at the Project Site as defined in the CRA Agreement (as particularly described in Exhibit A to the CRA Agreement); and

WHEREAS, Developer has acquired that certain real property located within the Village and the CRA, which is identified in the CRA Agreement as the Project Site; and

WHEREAS, the Developer intends to convey or has conveyed a part of the Project Site consisting of approximately 106.59 acres (such transferred property, which is described in Exhibit A-2 to this Agreement and depicted as “Lot 9, Rickenbacker Exchange Part 3”, may be referred to hereinafter as the “Transferred Property”) to Successor; and

WHEREAS, in connection with the conveyance of the Transferred Property by the Developer to the Successor, the Successor wishes to obtain the benefits of the CRA Agreement effective on the date of the conveyance of the Transferred Property to the Successor (the “Transfer Date”), and, as agreed in the CRA Agreement, the Village is willing to make these benefits available to the Successor on the terms set forth in the CRA Agreement as long as the Successor executes this Agreement and the Developer acknowledges its continued obligations under the CRA Agreement; and

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WHEREAS, this Agreement is being executed pursuant to Section 16 of the CRA Agreement which permits partial transfers and/or partial assignments of the CRA Agreement through an “Assignment and Assumption Agreement in substantially one of the forms attached” thereto (see CRA Agreement at Exhibit C.1 and Exhibit C.2).

NOW, THEREFORE, in consideration of the circumstances described above, the covenants contained in the CRA Agreement, and the benefit to be derived by the Successor from the execution hereof, the parties hereto agree as follows:

1. From and after the Transfer Date, the Developer hereby assigns (a) all of the obligations, agreements, covenants and restrictions set forth in the CRA Agreement to be performed and observed by the Owners only with respect to the Transferred Property, and (b) all of the benefits of the CRA Agreement only with respect to the Transferred Property. From and after the Transfer Date, the Successor hereby (i) agrees to be bound by, assume and perform, or ensure the performance of, all of the obligations, agreements, covenants and restrictions set forth in the CRA Agreement to be performed and observed by the Owners with respect to the Transferred Property; and (ii) certifies to the validity, as to the Successor as of the date of this Agreement, of all of the representations, warranties and covenants made by or required of the Owners that are contained in the CRA Agreement. Such obligations, agreements, covenants, restrictions, representations, and warranties include, but are not limited to, those contained in the following Sections of the CRA Agreement: Section 1 (“Project”), Section 4 (“Employee Positions”), Section 5 (“Provision of Information”), Section 7 (“Application for Exemption”), Section 8 (“Payment of Non-Exempt Taxes”), Section 11 (“Certification as to No Delinquent Taxes”), Section 14 (“Non-Discriminatory Hiring”), Section 19 (“Validity”), Section 22 (“R.C. Section 9.66 Covenants”) and Section 23 (“Annual Fee”).

2. The Village acknowledges through the Transfer Date that the CRA Agreement is in full force and effect, confirms that the Developer has complied with the CRA Agreement with regard to the Transferred Property, and releases the Developer from liability for any defaults occurring after the Transfer Date with regard to the Transferred Property.

3. The Successor further certifies, as required by R.C. Section 3735.671(E), that (i) the Successor is not a party to a prior agreement granting an exemption from taxation for a structure in Ohio, at which structure the Successor has discontinued operations prior to the expiration of the term of that prior agreement and within the five (5) years immediately prior to the date of this Agreement, (ii) nor is Successor a “successor” to, nor “related member” of, a party as described in the foregoing clause (i) of this Section 3. As used in this paragraph, the terms “successor” and “related member” have the respective meanings as prescribed in R.C. Section 3735.671(E).

4. The Village agrees that as to the Transferred Property the Successor has and shall have all entitlements and rights to tax exemptions, and obligations, as both (a) an “Owner” under the CRA Agreement, and (b) in the same manner and with like effect as if the Successor had been an original signatory (*i.e.*, the Developer) to the CRA Agreement.

5. Notices to the Village and to the Successor with respect to the CRA Agreement shall be given as stated in Section 21 thereof, addressed as follows:

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If to the Village, to: Attention: Fiscal Officer
10 West Scioto Street
Commercial Point, Ohio 43116

With a copy to: Dinsmore & Shohl LLP
Attention: Josh Cartee
191 W. Nationwide Blvd., Suite 300
Columbus, Ohio 43215

If to the Successor: IDI Logistics
Attention: Robert Stephens, Market Officer
3805 Edwards Road, Suite 150
Cincinnati, OH 45209

With a copy to: David J. Robinson, Attorney at Law, LLC
100 East Broad Street, Suite 1340
Columbus, Ohio 43215
Attn: David J. Robinson, Counsel

6. Successor covenants, pursuant to R.C. 9.66, that it has made no false statements to the State or any local political subdivision in the process of obtaining approval of the CRA tax exemptions; and that it does not owe: (i) any delinquent taxes to the State or a political subdivision of the State; (ii) any moneys to the State or a State agency for the administration or enforcement of any environmental laws of the States; and (iii) any other moneys to the State, a State agency or a political subdivision of the State that are past due, whether the amounts owed are being contested in a court of law or not. If any representative of Successor has knowingly made a false statement to the State or any local political subdivision to obtain the CRA tax exemptions, Successor shall be required to immediately return all benefits received by it under this Agreement pursuant to R.C. 9.66(C)(2) and Successor shall be ineligible for any future economic development assistance from the State, any State agency or a political subdivision pursuant to R.C. 9.66(C)(1). Any person who provides a false statement to secure economic development assistance may be guilty of falsification, a misdemeanor of the first degree, pursuant to R.C. 2921.13(F)(1), which is punishable by a fine of not more than \$1,000 and/or a term of imprisonment of not more than six (6) months. Any such requirement to return benefits under this Agreement, and/or ineligibility for future economic development assistance, as provided under this Section, shall have no applicability to nor effect any person other than the violator.

7. Successor hereby certifies for itself that at the time this Agreement is executed, (i) it does not owe any delinquent real or tangible personal property taxes to any taxing authority of the State and does not owe delinquent taxes for which it is liable under Chapters 5733, 5735, 5739, 5741, 5743, 5747, or 5753 of the Revised Code, or, if such delinquent taxes are owed, it is currently paying the delinquent taxes pursuant to an undertaking enforceable by the State or an agent or instrumentality thereof, (ii) it has not filed a petition in bankruptcy under 11 U.S.C.A. 101, et seq., and (iii) no such petition has been filed against it. For the purposes of this certification, delinquent taxes are taxes that remain unpaid on the latest day prescribed for payment without penalty under the chapter of the Ohio Revised Code governing payment of those taxes.

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8. The Successor shall have no power to further assign this Agreement without the express written approval of the Village Council.

9. The Developer, Successor and Village acknowledge that this Agreement must be approved by formal action of the Council of the Village as a condition for this Agreement to take effect. This Agreement is not binding on the parties until such approval.

10. This Agreement may be executed by the parties hereto in one or more counterparts or duplicate signature pages, each of which when so executed and delivered will be an original, with the same force and effect as if all required signatures were contained in a single original instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives to be effective as of the Transfer Date.

[Signature Page Follows]

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Exhibit A**

THE VILLAGE OF COMMERCIAL POINT, PICKAWAY COUNTY, OHIO

By: _____

Print Name: _____

Title: _____

By Ordinance No. 2022-____, dated January __, 2022
Verified and Certified:

Wendy Hastings, Fiscal Officer

APPROVED AS TO FORM:

Joshua Cartee
Village Solicitor

DEVELOPER

K-NOVA LLC, an Ohio limited liability company

By: _____

Print Name: _____

Title: _____

SUCCESSOR

IDI Rickenbacker G1, LLC,
a Delaware limited liability company

By: _____

Print Name: _____

Title: _____

Dated: _____

ACKNOWLEDGMENT OF DEVELOPER

The Developer (as defined in the CRA Agreement) hereby confirms its obligations under the CRA Agreement and hereby (i) agrees to be bound by, assume and perform, or ensure the performance of, all of the obligations, agreements, covenants and restrictions set forth in the CRA Agreement to be performed and observed by the Developer (except to the extent to which such obligations, agreements, covenants, and restrictions are expressly assumed by the Successor and related to any Transferred Property); and (ii) certifies to the validity, as to the Developer as of the date of this Agreement, of all of the representations, warranties and covenants made by or required of the Developer that are contained in the CRA Agreement.

K-NOVA LLC, an Ohio limited liability company

By: _____

Print Name: _____

Title: _____

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Exhibit A-1

TO PARTIAL ASSIGNMENT AND ASSUMPTION AGREEMENT

CRA Agreement

This Community Reinvestment Area Agreement (this "Agreement") is made and entered into by and among the VILLAGE OF COMMERCIAL POINT (the "Village"), a municipal corporation in the State of Ohio (the "State"), through the Village of Commercial Point Village Council (the "Council") and K-NOVA LLC, an Ohio limited liability company with an office located at 700 Home Avenue, Akron, Ohio 44310 (the "Developer").

WITNESSETH:

WHEREAS, the Village desires to pursue all reasonable and legitimate incentive measures to assist, encourage and stimulate development in specific areas of the Village and Pickaway County (the "County") that have not enjoyed sufficient reinvestment from remodeling or new construction; and

WHEREAS, the Village, by Ordinance No. 2018-13, adopted by the Council on December 3, 2018, and affirmed by the Council in Resolution No. 17-2019 on April 1, 2019 (collectively, the "CRA Legislation"), designated the area specified in the CRA Legislation as the Commercial Point Community Reinvestment Area No. 1 (the "CRA") pursuant to Ohio Revised Code ("R.C.") Sections 3735.65 through 3735.70 (the "CRA Act"), and authorized a real property tax exemption for the construction of new structures and the remodeling of existing structures in the CRA in accordance with the CRA Act; and

WHEREAS, the Developer has acquired the real property located within the Village and the CRA, as described in Exhibit A attached hereto (the "Project Site"); and

WHEREAS, the Developer has submitted to the Village an application for a community reinvestment area agreement (the "Application"), a copy of which is attached hereto as Exhibit B; and

WHEREAS, the Developer proposes to establish on the Project Site multiple class A industrial warehouse/distribution, logistics and/or manufacturing buildings together with related site improvements, as described in the Application (collectively, the "Project") (each individual building within the Project, with its related site improvements, may be referred to hereinafter from time to time as a "Building"), provided that the appropriate development incentives are available to support the economic viability of the Project; and

WHEREAS, the Developer intends to expand its operations to additional Buildings on the Project Site and/or transfer applicable portions of the Project Site or parts thereof to one or more transferees by lease, sale and/or other means of transfer (the Developer and such transferees other than by lease, together with any successors and assigns, collectively or singly, as the context requires, may be referred to hereinafter from time to time as an "Owner" or the "Owners"); each such transfer other than by lease may be made pursuant to a certain assignment and assumption agreement as described more fully in Section 16 hereof in order to bind each Owner to and under this Agreement; and

WHEREAS, the Developer has remitted or shall remit with the Application the required State of Ohio application fee of \$750.00, made payable to the Ohio Development Services Agency, to be forwarded with this Agreement, and has paid any applicable local fees; and

WHEREAS, pursuant to R.C. Section 3735.67(A) and in conformance with the format required under R.C. Section 3735.671(8), the Village and the Developer desire to formalize their agreement with respect to matters hereinafter contained; and

WHEREAS, the Project Site is located in the Teays Valley Local School District (the "Local School District") and the Eastland-Fairfield Career & Technical School District, and the board of education of each school district has been notified of the proposed approval of this Agreement in accordance with R.C. Sections 3735.671 and 5709.83, or has waived such notice, and has been given a copy of the Application and a draft of this Agreement; and

WHEREAS, pursuant to R.C. Section 3735.671, the Board of Education of the Local School District has (i) approved the terms of this Agreement, including the one hundred percent (100%) real property tax exemption for fifteen (15) years in return for payments to be made to the School District pursuant to a Compensation Agreement between the Developer and the School District; (ii) waived its rights to receive the forty-five (45) day and fourteen (14) day notices under R.C. Sections 3735.67 and 5709.83; (iii) waived the application of R.C. Sections 5709.82(C) and (D) to this Agreement; and (iv) consented to the approval and execution of this Agreement; and

WHEREAS, the Council, by Ordinance No. 2019-15, adopted on October 21, 2019, has approved the terms of this

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Agreement and authorized its execution on behalf of the Village; and

WHEREAS, the parties recognize that the exact legal and financing structure used by the Owners in developing, equipping and operating the Project may include additional legal entities and may evolve prior to and during the operation of the Project;

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained and the benefit to be derived by the parties from the execution hereof, the receipt and sufficiency of which are hereby acknowledged, the parties herein agree as follows:

1. Project. The cost of the investments to be made in connection with the Project by the Owners is estimated to equal or exceed \$50,000,000 for construction of new Buildings (exclusive of any amounts for acquisition of machinery and equipment, furniture and fixtures, and inventory) with each such Building expecting to contain approximately 100,000 to 1,000,000 square feet and with the total Project to comprise approximately 2,000,000 to 8,000,000 square feet or more. There are no existing commercial buildings at the Project Site. The estimates provided in this Section are good faith estimates provided pursuant to R.C. Section 3735.67I(B) and shall not be construed in a manner that would limit the amount or term of the tax exemptions provided in this Agreement. The parties recognize that the costs associated with the Project may increase or decrease significantly. The parties also recognize that costs do not necessarily equal otherwise taxable value.

2. Values of Personal Property. The value for Ohio personal property tax purposes of the non-inventory personal property of the Developer that is located at another location in Ohio prior to the execution of this Agreement and that is to be relocated from that location to the Project Site is \$0. The value for Ohio personal property tax purposes of the non-inventory personal property of the Developer located at the Project Site prior to the execution of this Agreement is \$0. The average value for Ohio personal property tax purposes of the inventory of the Developer held at another location in Ohio prior to the execution of this Agreement and to be relocated from that location to the Project Site is \$0. The average value for Ohio personal property tax purposes of the inventory of the Developer at the Project Site prior to the execution of this Agreement is \$0.

3. Project Schedule. The scheduled estimated starting month for the Project investments to be made in building, machinery, equipment, furniture, fixtures and/or inventory is approximately March 1, 2020; and the scheduled estimated completion month for such investments is no later than approximately December 31, 2040. The estimates provided in this Section are good faith estimates provided pursuant to R.C. Section 3735.67I(B) and shall not be construed in a manner that would limit the amount or term of the tax exemptions provided in this Agreement, other than as those tax exemptions are limited in Sections 6 of this Agreement.

4. Employee Positions. The Owners estimate that there will be created at the Project Site, cumulatively, approximately 500 to 1,000 full-time permanent employee positions with an aggregate annual payroll of approximately \$17,000,000.00 to \$35,000,000.00 upon full build-out of the Project and 0 part-time or temporary positions. Hiring of such employees is estimated to commence in 2021 and to continue incrementally over the succeeding 10-20 years. Currently, the Owners have 0 employees at the Project Site; therefore, no employee positions will be retained by the Owners in connection with the Project. The Developer has 0 employees in Ohio. The estimates provided in this Section 4 are good faith estimates provided pursuant to R.C. Section 3735.67I(B) and shall not be construed in a manner that would limit the amount or term of the tax exemptions provided in this Agreement. The parties recognize that the employment and payroll estimates associated with the Project may increase or decrease. The parties also recognize that it is anticipated that all employees at the Project Site will be hired by Owners other than the Developer.

5. Provision of Information. Each Owner shall provide to the proper tax incentive review council (the "TIRC") any information reasonably required by the TIRC to evaluate the compliance of such Owner with the Agreement, including returns or annual reports of such Owner filed pursuant to R.C. Section 5711.02 (if any) if requested by the TIRC.

6. Real Property Tax Exemption. The Village hereby grants a fifteen (15) year, 100% real property tax exemption pursuant to R.C. Section 3735.67 for the assessed value of new structures at the Project Site and a fifteen (15) year, 100% real property tax exemption pursuant to R.C. Section 3735.67 for the increase in the assessed value attributable to remodeling at the Project Site. For each separately identifiable real property improvement, the exemption commences the first year such real property improvement would first be taxable were that property not hereby exempted from taxation. No exemption shall commence after tax year 2040 (i.e., tax lien date January 1, 2040) nor extend beyond tax year 2054 (i.e., tax lien date January 1, 2054). In addition, no exemption for remodeling of a particular building may extend beyond the fifteen (15) year exemption term for construction of that building. Although exemption under this Agreement for any separately identifiable real property improvement lasts for only fifteen (15) years at the most, the real property