**Resolution #2012-02EDC**
**Brownsburg, IN**
**May 17, 2012**

# A RESOLUTION OF THE TOWN OF BROWNSBURG ECONOMIC DEVELOPMENT COMMISSION APPROVING AN AMENDMENT TO THE ECONOMIC DEVELOPMENT LOAN AGREEMENT BY AND BETWEEN THE TOWN OF BROWNSBURG, INDIANA AND CHEMISTRY, MANUFACTURING AND CONTROL, LLC

**WHEREAS,** the Town of Brownsburg, Indiana (the "Town"), is authorized by Indiana Code 6-3.5-7 et seq. and Indiana Code 36-7-12, et seq. (collectively as supplemented and amended the "Act") to issue loans to developers for the financing of economic development facilities, the funds from said financing to be used for the acquisition, construction, installation and/or equipping of such facilities; and

**WHEREAS,** on June 9, 2011 the Brownsburg Economic Development Commission (the "Commission") approved the issuance of certain economic development loans and a Lease Grant to Chemistry, Manufacturing and Control, LLC (the "Borrower") to assist in the financing of a new biotech and pharmaceutical development and manufacturing facility to be located in the Town pursuant to an Economic Development Loan Agreement (the "Agreement") by and between the Town and Borrower; and

**WHEREAS,** due to unforeseen circumstances, the implementation of the Project described in the Agreement has been delayed, and the Borrower has requested the extension for a period of one (1) year all deadlines, reporting requirements, and repayment obligations contained in the Agreement and the financing documents related thereto as evidenced in the Amendment to Economic Development Agreement (the "Amendment") in the form attached hereto and

**WHEREAS**, after review of the reasons for the unexpected delay in the Project, the Commission desires to accept the request of the Borrower for the one year extension and delay and approve the terms of the Amendment.

**NOW THEREFORE, BE IT RESOLVED** by the Commission, as follows:

1. The Amendment to Economic Development Loan Agreement by and between the Town of Brownsburg, Indiana and Chemistry, Manufacturing and Control, LLC in the form attached hereto is hereby approved in every way.

2. The Commission hereby recommends that the President of the Town Council and the Town Clerk be authorized, empowered and directed to execute the Amendment and all documents relating to the transactions contemplated therein, including, but not limited to, the Replacement Note. The Commission further authorizes, empowers and directs the President and Vice President of the Commission to execute all documents which may require authorization from the Commission. Pursuant to the provisions of I.C. 36-7-12-25(c), the President, Clerk and officers of the Commission may, by their signatures thereon, approve such changes to any of the foregoing documents as are allowable by law without further authorization of this Commission or the Town Council.

3. The Secretary of the Commission is directed to cause this Resolution and two copies of the Amendment in the form presented to this Commission to be transmitted to the office of the Clerk-Treasurer for presentation to the Town Council of the Town with the recommendation that the Town Council approve such documents in their final forms pursuant to the proposed form of Ordinance hereby recommended.

4. This Resolution shall be effective immediately upon its passage.

* * * * *

ADOPTED THIS 17th day of May, 2012.

BROWNSBURG, INDIANA ECONOMIC
DEVELOPMENT COMMISSION

By: _____
Joe Dunbar, President

_____
Lamoura Munse, Vice President

_____
Allan Bolante, Secretary

# AMENDMENT TO ECONOMIC DEVELOPMENT LOAN AGREEMENT BY AND BETWEEN THE TOWN OF BROWNSBURG, INDIANA AND CHEMISTRY, MANUFACTURING AND CONTROL, LLC

**Effective Date: May __, 2012**

**CMC, LLC Project**
481 Southpoint Circle, Suite 10
Brownsburg, Indiana 46112

# AMENDMENT TO ECONOMIC DEVELOPMENT LOAN AGREEMENT

**THIS AMENDMENT TO ECONOMIC DEVELOPMENT LOAN AGREEMENT** (the "Amendment") is made and entered into as of the ___ day of May, 2012, and amends the Economic Development Loan Agreement dated June 23, 2011 (the "Agreement") by and among the Town Council (the "Council") of the Town of Brownsburg, Indiana (the "Town"), the Town of Brownsburg Economic Development Commission (the "Commission"), and Chemistry, Manufacturing and Control, LLC, an Indiana limited liability company ("CMC," the "Company" or "Borrower").

**W I T N E S S E T H:**

**WHEREAS,** the Agreement was entered into by and among the Council, the Commission (collectively the "Town Bodies"), and the Company; and

**WHEREAS**, due to altered circumstances regarding the Project, the parties to the Agreement now desire to amend certain provisions of the Agreement and the related Note as set forth herein.

**NOW, THEREFORE,** in consideration of the foregoing and of the mutual covenants and agreements contained herein and in the Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

**Section 1.** **Employment and Investment Objectives**. Notwithstanding any other provision of the Agreement, the Objectives set forth in Exhibit "B" to the Agreement are hereby altered and superceded and shall be replaced for every purpose by the Objectives set forth in Exhibit "A" to this Amendment. In addition, notwithstanding the provisions of Section 4.01(b) of the Agreement, the Company's first reporting submission shall be due on May 15, 2013.

**Section 2.** **Repayment of Loan**. Notwithstanding any other provision of the Agreement, the repayment of the Loan, as defined in Section 4.01 of the Agreement, shall be at the stated rate for a period of five (5) years with payments first commencing on July 1, 2013 with a final maturity of July 1, 2017. A Replacement Note evidencing the obligation to repay the Loan shall be executed and shall be in the form attached hereto as Exhibit "B" and the original Note shall be cancelled and terminated by the Town upon execution of the Replacement Note. In addition, the final release date provided for in Section 4.01(g) of the Agreement shall be extended to May 15, 2017.

**Section 3.** **Notice Provisions.** The parties agree and acknowledge that pursuant to Section 6.08 of the Agreement, future notices to CMC shall be sent to the following:

| To the Company: | With a copy to: |
|---|---|
| CMC, LLC | Donald K. Densborn, Partner |
| 481 Southpoint Circle, Suite 10 | Taft Stettinius & Hollister, LLP |

| | |
|---|---|
| Brownsburg, IN 46112<br>Attention: CEO | One Indiana Square, Suite 3500<br>Indianapolis, IN 46204-2023 |

**Section 4.** **Ratification and Authority.** Except as specifically altered by this Amendment, all provisions of the Agreement and the documents related thereto previously executed by the Company (with the exception of the Note as altered above) are hereby affirmed and ratified in every way and shall remain in full force and effect and enforceable against the Company. By their signatures below, the undersigned attest that they are fully empowered to enter into and execute this Amendment and the documents referred to herein.

**IN WITNESS WHEREOF**, the parties have duly executed this Agreement pursuant to all requisite authorizations as of the date set forth above.

**TOWN COUNCIL OF THE TOWN OF BROWNSBURG, INDIANA**

By: _____
Dwayne Sawyer, Town Council President

ATTEST:

_____
Jeanette M. Brickler
Clerk-Treasurer

(Signature Page of the Brownsburg Economic Development Commission
to the Amendment to Loan Agreement)

**Approved at an open meeting on the ____ day of _____, 2012.**

**BROWNSBURG ECONOMIC
DEVELOPMENT COMMISSION**

By: _____
Joe Dunbar, President

ATTEST:

_____
Allan Bolante, Secretary

(Signature Page of the Borrower to the Amendment to Loan Agreement)

**CHEMISTRY, MANUFACTURING AND CONTROL, LLC**

By: _____

Arthur L. Patterson, Chief Executive Officer

ATTEST:

_____

## EXHIBIT A

### Employment and Capital Investment Objectives

Cumulative number of full-time permanent employees employed on March 1st of each calendar year indicated below and projected average wage, exclusive of fringe benefits and bonuses:

| Year | Cumulative Employees | Average Wage |
|---|---|---|
| 2013 | 18 | $30/hr. |
| 2014 | 35 | $30/hr. |
| 2015 | 49 | $30/hr. |
| 2016 | 53 | $30/hr. |
| 2017 | 68 | $30/hr. |

**Cumulative Total: 68 full time employees with an Average Wage of $30.00/hr. exclusive of benefits and bonuses by March 1, 2017.**

### Capital Investment Objectives

$8,800,000 in manufacturing and clean room equipment purchased and installed by March 1, 2017 as follows:

| Year | New Investment (as of March 1st) | Cumulative Investment |
|---|---|---|
| 2013 | $1,600,000 | $1,600,000 |
| 2014 | $2,400,000 | $4,000,000 |
| 2015 | $1,100,000 | $5,100,000 |
| 2016 | $1,100,000 | $6,200,000 |
| 2017 | $2,600,000 | $8,800,000 |

### Real Estate Investment Objectives

Lease of interim space in the Town of Brownsburg for Project operations for two to three years. Establish a permanent facility within the Town (on a lease or purchase basis) for the location of a Control Development and Manufacturing Organization Facility as described on Exhibits A and C of the Agreement in 2013, with a projected investment (including lease/purchase price and ancillary costs) of $7,500,000.

**EXHIBIT B**

**Form of Replacement Note**

# REPLACEMENT PROMISSORY NOTE
**(CMC, LLC Project)**

**FOR VALUE RECEIVED**, the undersigned, Chemistry, Manufacturing and Control, LLC ("Borrower"), a limited liability company organized and existing in good standing under the laws of the State of Indiana (the "Borrower"), hereby promises to pay to the order of the Town of Brownsburg, Indiana ("Town"), in immediately available funds, the principal sum of $100,000, or so much thereof as is advanced to Borrower by the Town, and interest thereon at the rate of seven percent (7%) per annum from the date advanced until repaid, during the term of the Economic Development Loan Agreement between the Borrower and the Town of Brownsburg dated as of June 23, 2011 and amended on May __, 2012 (the "Loan Agreement"), or twelve percent (12%) per annum during the occurrence and continuance of any Event of Default (as defined in the Loan Agreement). Such amount shall be payable in five (5) equal installments of principal and interest commencing on July 1, 2013, and on each July 1 thereafter, with the final payment of all outstanding principal and interest due on July 1, 2017. Borrower shall be entitled to prepay this Note without premium or penalty and upon such payment in full, Borrower shall be fully released from its obligations under this Replacement Note (hereafter the "Note") and the Loan Agreement.

This Note is issued pursuant to the Loan Agreement, as amended, and is entitled to the benefits, and is subject to the conditions thereof. The obligations of Borrower to make the payments required hereunder shall be absolute and unconditional without any defense or right of set-off, counterclaim or recoupment by reason of any default by Town under the Loan Agreement or under any other agreement between Borrower and Town or out of any indebtedness or liability at any time owing to the Borrower by the Town or for any other reason. By executing this Note, the Borrower attests that it has no claims of default or setoff, or any other claims or defenses whatsoever against the Town, as of the date of execution of this Note.

Upon the occurrence and continuance of an Event of Default and in the manner set forth in the Loan Agreement, (i) the entire principal amount of this Note and the interest accrued thereon may be declared to be due and payable and (ii) the Borrower shall be obligated to pay such additional amounts as is provided for in the Loan Agreement.

The Borrower hereby unconditionally waives diligence, presentment, protest and notice of dishonor of the payment of any amount at any time payable to the Town under or in connection with this Note. With respect to the collection of any indebtedness evidenced hereby all amounts payable hereunder are payable with reasonable attorneys fees and costs of collection and without relief from valuation and appraisement laws.

In any case where the date of payment hereunder shall be a Saturday, Sunday or a legal holiday or a day on which banking institutions in Indianapolis, Indiana are authorized by law to

close, then such payment shall be made on the next succeeding business day with the same force and effect as if made on the date of payment hereunder.

All capitalized terms not defined in this Note which are defined in the Loan Agreement shall have the meanings assigned to them in the Loan Agreement.

IN WITNESS WHEREOF, the Borrower has caused this Note to be duly executed and attested by its duly authorized officers or representatives.

Effective Date: May __, 2012.

**CMC, LLC**

By: _____
Arthur L. Patterson, CEO

Attest:

_____