

RESOLUTION NO. 27-2015

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A PROGRAM TO PROMOTE ECONOMIC DEVELOPMENT AND STIMULATE BUSINESS AND COMMERCIAL ACTIVITY IN THE CITY AND AUTHORIZING THE CITY MANAGER TO FINALIZE AND EXECUTE AN AGREEMENT FOR SUCH PURPOSES WITH BAKERS BROTHERS ROTOVISION, INC., AND 75032 INVESTMENTS, LLC, REGARDING THEIR RELOCATION TO 2615 BIG TOWN BOULEVARD, MESQUITE, TEXAS.

WHEREAS, Chapter 380 of the Texas Local Government Code authorizes municipalities to establish and provide for the administration of programs that promote economic development and stimulate business and commercial activity in the City of Mesquite (“City”); and

WHEREAS, the City Council has been presented with a proposed agreement providing economic incentives to Bakers Brothers Rotovision, Inc., a Texas corporation (“Baker Bros”) and 75032 Investments, LLC, a Texas limited liability company (“75032”, and together with Baker Bros, the “Company”), in connection with their relocation to 2615 Big Town Boulevard, Mesquite, Texas, a copy of said agreement being attached hereto as Exhibit “A” and incorporated herein by reference (the “Agreement”); and

WHEREAS, after holding a public hearing and upon full review and consideration of the Agreement and all matters attendant and related thereto, the City Council is of the opinion that the Agreement will assist in implementing a program whereby economic development will be promoted, and business and commercial activity will be stimulated in the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

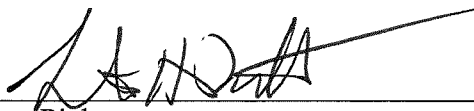
SECTION 1. That the City Council finds that the terms of the proposed Agreement by and between the City, Bakers Brothers Rotovision, Inc., and 75032 Investments, LLC, a copy of which is attached hereto as Exhibit “A” and incorporated herein by reference, will promote economic development, and stimulate business and commercial activity in the City in accordance with Section 380.001 of the Texas Local Government Code.

SECTION 2. That the City Council hereby adopts an economic development program whereby, subject to the terms and conditions of the Agreement, the City will provide economic development incentives to the Company and take other specified actions as more fully set forth in the Agreement in accordance with the terms and subject to the conditions outlined in the Agreement.

SECTION 3. That the terms and conditions of the Agreement, having been reviewed by the City Council and found to be acceptable and in the best interest of the City and its citizens, are hereby approved.

SECTION 4. That the City Manager is hereby authorized to finalize and execute the Agreement and all other documents necessary to consummate the transactions contemplated by the Agreement.

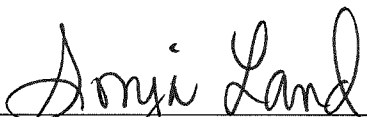
DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 1st day of June, 2015.



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Stan Pickett  
Mayor

ATTEST:



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Sonja Land  
City Secretary

APPROVED:



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B.J. Smith  
City Attorney

**EXHIBIT "A"**

**380 Agreement between the City of Mesquite and  
Baker Brothers Rotovision, Inc., and 75032 Investments, LLC**

## **ECONOMIC DEVELOPMENT PROGRAM AGREEMENT**

### **(Chapter 380 Agreement)**

This Economic Development Program Agreement (“Agreement”) is made and entered into by and between the City of Mesquite, a Texas home rule municipality (the “City”), Baker Brothers Rotovision, Inc. (the “Company”) and 75032 Investments, LLC, a Texas Limited Liability Company (“75032”) for the purposes and considerations stated below:

#### **WITNESSETH:**

**WHEREAS**, all capitalized terms used herein shall have the meanings set forth in Article II of this Agreement; and

**WHEREAS**, the City, the Company and 75032 may each hereinafter be referred to as a “Party,” and may collectively be referred to as the “Parties” to this Agreement; and

**WHEREAS**, the Company is currently operating its business at and from a facility located in Dallas, Texas; and

**WHEREAS**, the Company desires to relocate its business to an approximately 30,000 square foot building (the “Building”) located on the real property described in **Exhibit “A”** attached hereto and made a part hereof for all purposes (the “Land”) and being commonly known as 2615 Big Town Boulevard, Mesquite, Texas (the Land and Building being hereinafter sometimes collectively referred to as the “Mesquite Facility”); and

**WHEREAS**, 75032 is an Affiliate of the Company created for the purpose of owning and leasing the Mesquite Facility to the Company; and

**WHEREAS**, 75032 and the Company plan to renovate and repurpose the Building and establish the Mesquite Facility as the Company’s corporate headquarters and primary place of business; and

**WHEREAS**, the Company has historically provided only plumbing services but has recently expanded its services to add a new heating/air conditioning division and may hereafter expand its business to provide additional services (collectively the “Company’s Business”); and

**WHEREAS**, the Company has plans to increase the Company’s Business at an aggressive rate including, without limitation, plans to expand its newly added heating/air conditioning division; and

**WHEREAS**, the Company currently employs approximately 140 employees and as the Company’s Business expands, the Company anticipates hiring new office support staff and field employees who will work at and from the Mesquite Facility; and

**WHEREAS**, 75032 and/or the Company will be making approximately \$500,000.00 in Capital Improvements to the Building and will be purchasing and/or relocating business personal property to the Mesquite Facility which will increase the taxable value of the Building and business personal property at the Mesquite Facility, add value to the City’s tax rolls and increase the ad valorem real and personal property taxes assessed and collected by the City; and

**WHEREAS**, one or more In-House Suppliers will be located at the Mesquite Facility and will maintain items of Inventory at the Mesquite Facility adding value to the City’s tax rolls and increasing the ad valorem personal property taxes assessed and collected by the City; and

**WHEREAS**, one or more In-House Suppliers will ship materials, parts and supplies to the Company from the Mesquite Facility thereby increasing the sales tax collected by or on behalf of the City; and

**WHEREAS**, the Company has agreed to operate the Company's Business at the Mesquite Facility for a period of at least ten (10) years commencing with the Move-in Date; and

**WHEREAS**, the relocation of the Company to the Mesquite Facility will result in the creation of new employment opportunities in the City and the commitment by the Company to operate its business at the Mesquite Facility for a period of at least ten (10) years from the Move-In Date will result in the retention of employment opportunities in the City; and

**WHEREAS**, the Company has advised the City that a contributing factor inducing the Company to relocate to the City and to agree to operate the Company's Business at the Mesquite Facility for a period of at least ten (10) years after the Move-In Date is the agreement by the City to provide the economic development incentives more fully set forth in this Agreement upon the terms and subject to the conditions more fully set forth in this Agreement; and

**WHEREAS**, the City has established an Economic Development Program pursuant to §380.001 of the Texas Local Government Code ("the "Program") and authorizes this Agreement as part of the Program; and

**WHEREAS**, the Company and 75032 desire to participate in the Program by entering into this Agreement; and

**WHEREAS**, the City Council finds and determines that the relocation of the Company to the City and the Company's commitment to operate the Company's Business at the Mesquite Facility for a period of at least ten (10) years after the Move-In Date will benefit the City and its citizens because, inter alia, (i) the relocation of the Company to the City and the operation of the Company's Business at the Mesquite Facility will promote local economic development and stimulate business and commercial activity in the City; (ii) the Capital Improvements to the Building and the operation of the Company's Business at the Mesquite Facility will increase the taxable value of the Land, Building and Business Personal Property at the Mesquite Facility thereby adding value to the City's tax rolls and increasing the ad valorem taxes to be collected by the City; (iii) the operation of the Company's Business at the Mesquite Facility will increase the sales taxes collected by the City; and (iv) employment opportunities will be created and retained in the City; and

**WHEREAS**, the City Council finds and determines that this Agreement will effectuate the purposes set forth in the Program and that the granting of the economic development incentives more fully set forth herein on the terms and subject to the conditions more fully set forth herein will benefit the City and will accomplish the public purpose of promoting local economic development and stimulating business and commercial activity in the City.

**NOW, THEREFORE**, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

## ARTICLE I

### Incorporation of Recitals

The foregoing recitals are hereby incorporated into the body of this Agreement and shall be considered a part of the mutual covenants, consideration and promises that bind the Parties.

## ARTICLE II

### Definitions

As used herein, the following terms shall have the following meanings, to-wit:

“Acceptable Protest” with respect to the Land and Building shall mean a protest, challenge or appeal to DCAD for any Tax Year seeking a reduction in the taxable value of the Land and Building as appraised by DCAD for such Tax Year to an amount equal to or greater than the Base Taxable Value of the Land and Building. “Acceptable Protest” with respect to the Business Personal Property shall mean a protest, challenge or appeal to DCAD for any Tax Year seeking a reduction in the taxable value of the Business Personal Property as appraised by DCAD for such Tax Year to an amount equal to or greater than the Base Taxable Value of the Business Personal Property.

“Additional Municipal Sales Taxes” shall mean all sales taxes now and hereafter authorized, adopted, imposed and/or collected by or on behalf of the City pursuant to §321.101(b) of the Texas Tax Code, as amended and/or replaced, and shall specifically include all Type B Sales Taxes, Property Tax Relief Taxes and all sales taxes now and hereafter prohibited by law from being used for payment of economic development incentives.

“Affiliate” shall mean any Person who controls, is controlled by, or is under common control with the Company. For purposes of this Agreement, 75032 Investments, LLC, a Texas Limited Liability Company shall be deemed an Affiliate of the Company. As used in this definition of “Affiliate,” the term “control” means, directly or indirectly, the power to direct or cause the direction of the management and policies of a Person, whether through ownership, by contract or otherwise.

“Agreement” shall mean this agreement together with all exhibits attached hereto.

“Base Tax Year” shall mean the first Tax Year that DCAD’s assessed value of the Land and Building includes the approximately \$500,000.00 of Capital Improvements being made by 75032 and/or the Company to the Building as part of the Company’s relocation to the Mesquite Facility.

“Base Taxable Value of the Land and Building” shall mean the taxable value of the Land and Building as appraised by DCAD as of January 1 of the Base Tax Year.

“Base Taxable Value of the Business Personal Property” shall mean the taxable value of the Business Personal Property as appraised by DCAD as of January 1 of the Base Tax Year.

“Building” shall have the meaning set forth in the recitals to this Agreement.

“Business Personal Property” shall mean moveable items of personal property owned by the Company and used in the Company’s ordinary course of business which are located at the Mesquite Facility but are not permanently affixed to, or part of, the Land or Building and shall include, without limitation, machinery, equipment, furniture, computers, vehicles and Inventory *provided, however*, such items must be taxed as business personal property and the City must be the local taxing jurisdiction entitled to tax and collect ad valorem taxes on such items.

“Calendar Quarter” as used herein shall mean January, February and March; April, May and June; July, August and September; and October, November and December of each calendar year.

“Capital Improvements” shall mean expenditures for structural improvements, major renovations, replacements, upgrades and other substantial alterations, changes, modifications, additions and/or physical improvements to the Building that extend the useful life of the Building or that increase the Building’s usefulness or productivity, provided, however, in no event will any expenditures be considered as “Capital Improvements” unless such expenditure would be added to the basis of the Building and depreciated as a capital expenditure under generally accepted accounting principles.

“Certificate of Compliance” shall mean a certificate in such form as is reasonably acceptable to the City executed on behalf of the Company by a duly authorized Company Representative certifying to the City that: (i) all Conditions Precedent have been satisfied and are then continuing; and (ii) that no Default then exists by the Company under the terms of this Agreement and that no event exists which, but for notice, the lapse of time, or both, would constitute a Default by the Company under the terms of this Agreement.

“Certificate of Occupancy” shall mean a final certificate of occupancy issued to the Company by the City authorizing the Company to operate the Company’s Business at the Mesquite Facility.

“City” shall mean the City of Mesquite, a Texas home rule municipality.

“City Council” shall mean the governing body of the City.

“City Sales Tax” and “City Sales Taxes” shall mean the municipal sales taxes collected by or on behalf of the City for general fund purposes authorized pursuant to §321.101(a) of the Texas Tax Code, as amended and/or replaced, and currently at the rate of one percent (1.0%) pursuant to §321.103(a) of the Texas Tax Code and specifically does not include the State of Texas Sales Taxes and any Additional Municipal Sales Taxes.

“Company” shall mean Baker Brothers Rotovision, Inc., its successors and assigns permitted pursuant to the terms of Section 12.1 of this Agreement.

“Company Representative” shall mean the Chief Executive Officer, Chief Financial Officer or President of the Company.

“Company’s Business” shall have the meaning set forth in the Recitals to this Agreement.

“Compliance Period” shall mean the period commencing with the Effective Date and continuing for a period of twelve (12) months thereafter.

“Condition Precedent” and “Conditions Precedent” shall have the meanings set forth in Article VIII of this Agreement.

“DCAD” shall mean the Dallas Central Appraisal District.

“Effective Date” shall mean the date the Company and the City execute this Agreement if both the Company and the City execute this Agreement on the same date. If the Company and the City execute this Agreement on different dates, any reference to the “Effective Date” shall mean the later of the two dates this Agreement is executed by the Company and the City.

“Event of Force Majeure” shall mean a major unforeseeable act or event that: (i) prevents a Party from performing its obligations under this Agreement (the “Non-Performing Party”); (ii) is beyond the reasonable control of the Non-Performing Party; (iii) is not caused by any act or omission on the part of the Non-Performing Party or the Non-Performing Party’s officers, agents, representatives, employees,

contractors, customers or invitees; and (iv) could not have been prevented or avoided by the exercise by the Non-Performing Party of such reasonable diligence and reasonable care as would be exercised by a prudent person under similar circumstances. An “Event of Force Majeure” must satisfy each of the above requirements and includes but is not necessarily limited to the following, to-wit: lightning, floods, ice storms, hurricanes, tornadoes, earthquakes, natural disasters, acts of God, explosions, fires, war, terrorism, civil disturbance, temporary work stoppages due to strikes by employees and material shortages due to the inability of the Company to obtain materials from the Company’s suppliers for reasons other than the cost of the materials. Notwithstanding the foregoing, an “Event of Force Majeure” does not include any financial or economic hardship, changes in market or economic conditions, or insufficiency of funds.

“Highest Lawful Rate” shall have the meaning set forth in Article VI of this Agreement.

“Incentive Payment” and “Incentive Payments” shall mean economic development incentive(s) to be paid by the City to the Company pursuant to the terms and subject to the conditions set forth in this Agreement to provide grants to the Company for the Incentive Period measured by a percentage of: (i) the ad valorem taxes assessed and collected by the City against the Land, Building and Business Personal Property during the Incentive Period; (ii) the ad valorem taxes assessed and collected by the City against Inventory owned by In-House Suppliers located at the Mesquite Facility during the Incentive Period provided such Inventory is purchased by the Company and shipped to the Company from the Mesquite Facility; (iii) the Net City Sales Taxes paid by the Company to In-House Suppliers and paid by In-House Suppliers to the City for Inventory shipped to the Company from the Mesquite Facility during the Incentive Period; and (iv) the Net City Sales Taxes paid to the City by the Company during the Incentive Period, all as more fully set forth herein.

“Incentive Period” shall mean the period commencing with January 1, 2016 and continuing until December 31, 2025.

“Incentive Tax Year” shall mean the period consisting of three hundred and sixty five (365) calendar days [or three hundred and sixty six (366) calendar days for any calendar year that is a leap year] beginning on January 1, 2016 and ending on December 31, 2016 and continuing on January 1<sup>st</sup> and ending on December 31<sup>st</sup> of each and every calendar year thereafter for nine (9) consecutive calendar years thereafter. For illustration purposes only, January 1, 2016 through December 31, 2016 shall be the first Incentive Tax Year and January 1, 2025 through December 31, 2025 shall be the last Incentive Tax Year.

“In-House Supplier” and “In-House Suppliers” shall mean inventory management supplier(s) now or hereafter located on site at the Mesquite Facility who sell and ship Inventory to the Company from the Mesquite Facility.

“Inventory” shall mean materials, parts and supplies taxed as business personal property [specifically excluding goods in transit, Freeport goods and any non-taxable items].

“Land” shall have the meaning set forth in the recitals to this Agreement.

“Mesquite Facility” shall have the meaning set forth in the recitals to this Agreement.

“Move-in Date” shall mean the date the Company is issued a Certificate of Occupancy for the Building.

“Net City Sales Taxes” shall mean the City Sales Taxes collected by or on behalf of the City less the two percent (2%) collection fee retained by the State Comptroller and less any credits for returned items.

“Party” and “Parties” shall have the meanings set forth in the Recitals to this Agreement.



“Payment Request” and “Payment Requests” shall mean written request(s) executed by a duly authorized Company Representative requesting an Incentive Payment.

“Person” shall mean an individual or a corporation, partnership, limited liability company, trust, estate, unincorporated organization, association or other entity.

“Prime Rate” as used herein shall mean the rate of interest periodically announced by the Wall Street Journal as the prime or base commercial lending rate, or if the Wall Street Journal shall ever cease to exist or cease to announce a prime or base lending rate, then at the annual rate of interest from time to time announced by Citibank, N.A. (or by any other New York money center bank selected by the City) as its prime or base commercial lending rate.

“Program” shall have the meaning set forth in the recitals to this Agreement.

“Property Tax Relief Taxes” shall mean the municipal sales taxes authorized, adopted, imposed and/or collected by or on behalf of the City pursuant to §321.101(b) of the Texas Tax Code, as amended and/or replaced, currently at the rate of one-half of one percent (.5%) to be used to reduce the property tax rate of the City.

“State Comptroller” shall mean the Office of the Texas Comptroller of Public Accounts, or any successor agency.

“State of Texas Sales Taxes” shall mean the State of Texas sales taxes, currently at the rate of six and one-quarter percent (6.25%), authorized, adopted, imposed and/or collected pursuant to §151.051 of the Texas Tax Code, as amended and/or replaced, and all other sales taxes now and hereafter authorized, adopted, imposed and/or collected by or on behalf of the State of Texas.

“Supplier’s Report” and “Suppliers’ Reports” shall have the meaning set forth in Article VIII, Section 5 of this Agreement.

“Tax Year” shall mean a period consisting of three hundred and sixty five (365) calendar days [or three hundred and sixty six (366) calendar days for any calendar year that is a leap year] beginning on January 1<sup>st</sup> of each calendar year during the Incentive Period and continuing until and including December 31<sup>st</sup> of the same calendar year.

“Temporary Periods” as used herein shall mean one or more periods of time when the Company’s continued occupancy of the Building is prevented by an Event of Force Majeure provided, however, in no event will any such period exceed nine (9) months.

“Term” shall have the meaning set forth in Article IV of this Agreement.

“Type B Sales Taxes” shall mean the municipal sales taxes authorized, adopted, imposed and/or collected by or on behalf of the City pursuant to §321.101(b) of the Texas Tax Code, as amended and/or replaced, currently at the rate of one-half of one percent (.5%), for use by the Mesquite Quality of Life Corporation, a Type B economic development corporation, operating pursuant to Chapter 505 of the Texas Local Government Code, as amended and/or replaced, and shall also include any other sales taxes now or hereafter authorized, adopted, imposed and/or collected by or on behalf of the City for use by any other Type B economic development corporation hereafter created by or on behalf of the City.

“Undocumented Workers” shall mean individuals who, at the time of employment with the Company, are not: (i) lawfully admitted for permanent residence to the United States or are not authorized under law to be employed in that manner in the United States; and (ii) such other Persons as are included within the definition of undocumented workers pursuant to 8 U.S.C. §1324a (f) and/or or any other applicable state and/or federal law or regulation.

### ARTICLE III

#### Authority for Agreement

This Agreement is authorized by Article III, Section 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code. The City Council finds and determines that substantial economic benefit will accrue to the City as a result of the Company relocating to the City and the Company's commitment to operate the Company's Business at the Mesquite Facility for a period of at least ten (10) years after the Move-In Date because, inter alia, (i) the relocation of the Company to the City and the operation of the Company's business at the Mesquite Facility will promote local economic development and stimulate business and commercial activity in the City; (ii) the Capital Improvements to the Building and the operation of the Company's Business at the Mesquite Facility will increase the taxable value of the Land, Building and Business Personal Property located at the Mesquite Facility thereby adding value to the City's tax rolls and increasing the ad valorem taxes to be collected by the City; (iii) the operation of the Company's Business at the Mesquite Facility will increase the sales taxes collected by the City; and (iv) employment opportunities will be created and retained in the City and accordingly, the value of the benefits of this Agreement to the City outweigh the amount of incentives to be paid by the City under this Agreement.

### ARTICLE IV

#### Term

The term of this Agreement shall commence on the Effective Date and shall continue thereafter until and including June 30, 2026, unless sooner terminated as provided herein (the "Term").

### ARTICLE V

#### Covenant Not to Protest, Challenge or Appeal Property Valuations

5.1 Covenant Regarding Land and Building. The Company and 75032 acknowledge that pursuant to an agreement between the Company and 75032, the Company will pay the ad valorem taxes assessed against the Land and Building during the Term of this Agreement. The Company and 75032 further acknowledge that a material consideration for the City's agreement to pay the Incentive Payments as set forth herein is the agreement by the Company and 75032 not to protest, challenge or appeal the valuation of the Land and Building as assessed by DCAD at any time during the Term of this Agreement unless the protest, challenge or appeal is an Acceptable Protest. Accordingly, the Company and 75032 each hereby jointly and severally covenant and agree that neither the Company, 75032 or any Person acting on behalf of the Company and/or 75032, will protest, challenge or appeal the valuation of the Land and Building as assessed by DCAD at any time during the Term of this Agreement requesting a reduction in the taxable value of the Land and Building to an amount less than the Base Taxable Value of the Land and Building. 75032 expressly consents to the terms and provisions of this Agreement, consents to the payment of the Incentive Payments by the City to the Company and acknowledges and agrees that 75032 is not entitled to any Incentive Payments, refunds or rebates of any portion of the ad valorem taxes assessed against the Land, Building and/or Business Personal Property.

5.2 Covenant Regarding Business Personal Property. The Company acknowledges that a material consideration for the City's agreement to pay the Incentive Payments as set forth herein is the agreement by the Company not to protest, challenge or appeal the valuation of the Business Personal Property as assessed by DCAD at any time during the Term of this Agreement unless the protest, challenge or appeal is an Acceptable Protest. Accordingly, the Company hereby covenants and agrees that neither the Company or any Person acting on behalf of the Company, will protest, challenge or appeal the valuation of the Business Personal Property as assessed by DCAD at any time during the Term of this Agreement requesting a reduction in the taxable value of the Business Personal Property to an amount less than the Base Taxable Value of the Business Personal Property.

## ARTICLE VI

### Company's Covenants Regarding Undocumented Workers

6.1 Covenant Not to Employ Undocumented Workers. The Company hereby certifies that the Company and each branch, division, and department of the Company does not employ any Undocumented Workers and the Company hereby covenants and agrees that the Company and each branch, division and department of the Company will not knowingly employ any Undocumented Workers during the Term of this Agreement.

6.2 Covenant to Notify City of Conviction for Undocumented Workers. The Company further hereby covenants and agrees to provide the City with written notice of any conviction of the Company, or any branch, division or department of the Company, of a violation under 8 U.S.C. §1324a (f) within thirty (30) days from the date of such conviction so long as such conviction occurs during the Term of this Agreement or was based, in whole or in part, on the Company's actions during the Term of this Agreement.

6.3 Repayment of Incentive Payments in Event of Conviction for Employing Undocumented Workers. If, after receiving any Incentive Payment under the terms of this Agreement, the Company, or a branch, division or department of the Company, is convicted of a violation under 8 U.S.C. §1324a (f), the Company shall pay to the City, not later than the 120<sup>th</sup> day after the date the City notifies the Company of the violation, an amount equal to the total amount of all Incentive Payments paid by the City to the Company under the terms of this Agreement plus interest at the rate equal to the *lesser* of: (i) the highest rate allowable by law (the "Highest Lawful Rate"); or (ii) the Prime Rate, such interest rate to be calculated on each such Incentive Payment from the date each such Incentive Payment was paid by the City to the Company until the date repaid by the Company to the City and such interest rate shall adjust periodically as of the date of any change in the Highest Lawful Rate and as of the date of any change in the Prime Rate.

6.4 Limitation on Incentive Payments. The City shall have no obligation to make any Incentive Payments to the Company if the Company, or any branch, division or department of the Company, is convicted of a violation under 8 U.S.C. §1324a (f).

6.5 Remedies. The City shall have the right to exercise all remedies available by law to collect any sums due by the Company to the City pursuant to this Article VI including, without limitation, all remedies available pursuant to Chapter 2264 of the Texas Government Code.

6.6 Survival. The covenants, agreements and obligations of the Company and the rights and remedies of the City set forth in Article VI of this Agreement shall expressly survive the termination of this Agreement provided, however, any cause of action, suit or other proceeding at law or in equity to exercise such rights and remedies or to enforce such terms, provisions, covenants or obligations must be commenced on or before the later of: (i) four (4) years after the termination of this Agreement; (ii) any applicable statute of limitations; and (iii) such later time period, if any, provided by statute or otherwise requiring or permitting the City to exercise such rights and remedies or to enforce such terms, provisions, covenants or obligations.

## ARTICLE VII

### Company's Additional Covenants

In consideration of the City's agreement to make the Incentive Payments to the Company as more fully set forth herein, the Company covenants and agrees as follows, to-wit:

1. To obtain a Certificate of Occupancy for the Building and commence the operation of the Company's Business at the Mesquite Facility on or before the last day of the Compliance Period;
2. To use the Mesquite Facility as the Company's corporate headquarters and primary place of business from the Move-in Date and continuously thereafter during the Incentive Period except for such Temporary Periods when the Company's use of the Mesquite Facility is prevented by an Event of Force Majeure;
3. To operate the Company's Business at the Mesquite Facility from the Move-in Date and continuously thereafter during the Incentive Period except for such Temporary Periods when the Company's continued operation of the Company's Business at the Mesquite Facility is prevented by an Event of Force Majeure;
4. To purchase at least fifty percent (50%) of the Company's plumbing "cost of sales - materials" from a supplier who ships plumbing materials, parts and supplies to the Company from a location in the City from the Move-In Date and continuously thereafter during the Incentive Period. The "cost of sales - materials" shall mean plumbing materials, parts and supplies that are sold to and charged to the Company's customers;
5. To deliver to the City within thirty (30) days after written request, electronic copies of statements reflecting invoice and related sales tax information by purchase location, payment records and other documentation as the City may reasonably request to confirm compliance by the Company with the covenants of the Company more fully set forth in this Agreement;
6. To provide the City, its agents and employees with access to the Mesquite Facility at such times as the City may reasonably request to conduct such inspections as the City deems necessary in order to confirm compliance by the Company with the terms and provisions of this Agreement; provided however, that such access shall not unreasonably interfere with the Company's operations at the Mesquite Facility;
7. To provide a representative of the Company to accompany the City during all inspections of the Mesquite Facility conducted by the City pursuant to this Article VII;
8. To timely pay all ad valorem taxes assessed against the Land, the Building and the Business Personal Property during the Incentive Period prior to the date such taxes become delinquent;
9. To timely keep and perform all terms, provisions, covenants, conditions, obligations and agreements to be kept or performed by the Company under the terms of this Agreement and all other agreements now or hereafter existing between the Company and the City; and
10. To timely comply with all applicable federal, state and local laws and regulations.

## ARTICLE VIII

### Conditions Precedent to Payment of Incentive Payments

The Company and the City hereby expressly acknowledge and agree that the City's obligation to pay any Incentive Payment shall expressly be conditioned upon the satisfaction of the following conditions precedent (individually a "Condition Precedent" and collectively the "Conditions Precedent"), to-wit:

1. The Company shall submit an annual Payment Request to the City for all Incentive Payments payable pursuant to Sections 9.1(i), 9.1(ii) and 9.1(iii) of this Agreement. The first such Payment Request shall be submitted on or before April 15, 2017 and subsequent Payment Requests shall be submitted on or before the 15<sup>th</sup> day of April of each calendar year thereafter until and including April 15, 2026. Each such Payment Request shall be accompanied by a Certificate of Compliance dated effective as of the date of the Payment Request and shall request the payment of the Incentive Payments payable pursuant to Sections 9.1(i), 9.1(ii) and 9.1(iii) of this Agreement for the previous Incentive Tax Year. For illustration purposes only, the Payment Request for Incentive Payments payable pursuant to Sections 9.1(i), 9.1(ii) and 9.1(iii) of this Agreement for the first Incentive Tax Year [2016] shall be submitted to the City on or before April 15, 2017 for the Incentive Tax Year commencing on January 1, 2016 and ending on December 31, 2016 and the Payment Request for Incentive Payments payable pursuant to Sections 9.1(i), 9.1(ii) and 9.1(iii) for the last Incentive Tax Year [2025] shall be submitted to the City on or before April 15, 2026 for the Incentive Tax year commencing on January 1, 2025 and ending on December 31, 2025.
2. With respect to each Incentive Payment payable pursuant to Section 9.1(i) and 9.1(ii) below, the City shall have verified that it has received payment in full of all real and personal property ad valorem taxes due and payable by the Company and/or 75032 to the City in connection with the Land, Building and Business Personal Property for the Incentive Tax Year for which the Payment Request is being made;
3. With respect to each Incentive Payment payable pursuant to Section 9.1(iii) below: (i) each In-House Supplier shall have been assigned a separate DCAD Account Number for the purpose of rendering and paying ad valorem taxes on Inventory owned by such In-House Supplier located only at the Mesquite Facility; (ii) each In-House Supplier shall have submitted to the City its DCAD Account Number for the Mesquite Facility which the City will utilize to verify that such In-House Supplier has remitted personal property ad valorem taxes on all Inventory owned by such In-House Supplier located only at the Mesquite Facility; and (iii) the City shall have verified that it has received payment in full of all personal property ad valorem taxes due and payable on all Inventory owned by In-House Suppliers located at the Mesquite Facility for the Incentive Tax Year for which the Payment Request is being made;
4. The Company shall submit quarterly Payment Requests to the City for all Incentive Payments payable pursuant to Sections 10.1(i) and 10.1(ii) of this Agreement. Such Payment Requests shall be submitted by the Company to the City on or before the 15<sup>th</sup> day of the second calendar month following the end of each Calendar Quarter during the Incentive Period. Each such Payment Request shall be accompanied by a Certificate of Compliance dated effective as of the date of the Payment Request and shall request the payment of the Incentive Payments payable pursuant to Sections 10.1(i) and 10.1(ii) below for the previous Calendar Quarter. For illustration purposes only, the Payment Requests for Incentive Payments payable pursuant to Sections 10.1(i) and 10.1(ii) of this Agreement for the Calendar Quarters during the first calendar year of the Incentive Period [2016]

shall be submitted to the City: (i) on or before May 15, 2016 for the Calendar Quarter commencing January 1, 2016 and ending on March 31, 2016; (ii) on or before August 15, 2016 for the Calendar Quarter commencing April 1, 2016 and ending on June 30, 2016; (iii) on or before November 15, 2016 for the Calendar Quarter commencing July 1, 2016 and ending on September 30, 2016; and (iv) on or before February 15, 2017 for the Calendar Quarter commencing on October 1, 2016 and ending on December 31, 2016.

5. With respect to each Incentive Payment payable pursuant to Section 10.1(i) below: (i) the Company shall have submitted to the City contemporaneously with each such Payment Request an internal report prepared by all In-House Suppliers (hereinafter individually a "Supplier's Report" and sometimes collectively the "Suppliers' Reports") reflecting at a minimum: (a) the total amount of taxable sales of Inventory shipped by such In-House Supplier to the Company from the Mesquite Facility during the previous Calendar Quarter; (b) the total amount of sales tax revenue collected by the In-House Supplier from the Company in connection with the sales referred to in Subsection 5(i)(a) above; (c) the total amount of sales taxes paid by the In-House Supplier to the State Comptroller in connection with the sales referred to in Subsection 5(i)(a) above; and (d) the total amount of municipal sales taxes paid by the In-House Supplier to the State Comptroller for further remittance to the City in connection with the sale transactions referred to in Subsection 5(i)(a) above; (ii) each In-House Supplier shall have been assigned a sales tax identification account number and a sales tax location number for the Mesquite Facility for the purpose of reporting and paying sales taxes on the sale of Inventory sold and shipped by the In-House Supplier from the Mesquite Facility; (iii) the Company shall have submitted to the City contemporaneously with each Payment Request the sales tax identification account numbers and the sales tax location numbers referred to in Subsection 5(ii) above; (iv) the City shall have obtained from the State Comptroller a confidential information report for each In-House Supplier breaking down each In-House Supplier's total taxable sales by location and confirming at a minimum the total amount of taxable sales of Inventory shipped by each In-House Supplier from the Mesquite Facility during the previous Calendar Quarter; (v) the City shall have verified that the total amount of taxable sales reported on the sales tax reports filed by each In-House Supplier with the State Comptroller for the sale of Inventory shipped from the Mesquite Facility for the previous Calendar Quarter is equal to or greater than the amount of taxable sales reported in such Supplier's Report as having been shipped to the Company for the same period; and (vi) the City shall have verified that it has received payment in full of all City Sales Taxes owed by each In-House Supplier for sales of Inventory shipped from the Mesquite Facility for the Calendar Quarter for which the Payment Request is being made;
6. With respect to each Incentive Payment payable pursuant to Section 10.1(ii) below: (i) the Company shall have submitted to the City contemporaneously with each such Payment Request: (a) the sales tax identification account number assigned to the Company for the purpose of reporting and paying sales taxes to the State of Texas; and (b) the sales tax location number assigned to the Company for the Mesquite Facility; (ii) the City shall have obtained from the State Comptroller a confidential information report confirming at a minimum the total amount of City Sales Taxes paid by the Company to the State Comptroller for further remittance to the City during the previous Calendar Quarter; and (iii) the City shall have verified that it has received payment in full of all City Sales Taxes owed by the Company to the City for the Calendar Quarter for which the Payment Request is being made;
7. A Certificate of Occupancy shall have been issued by the City to the Company permitting the Company to occupy the Building on or before the last day of the Compliance Period;

8. The Company shall have commenced the operation of the Company's Business at the Mesquite Facility on or before the last day of the Compliance Period;
9. The Company shall have operated the Mesquite Facility as the Company's corporate headquarters and primary place of business from the Move-in Date and continuously thereafter up to and including the date of the Payment Request except for such Temporary Periods when the Company's use of the Mesquite Facility is prevented by an Event of Force Majeure;
10. The Company shall have operated the Company's Business at the Mesquite Facility from the Move-in Date and continuously thereafter up to and including the date of the Payment Request except for such Temporary Periods when the Company's continued operation of the Company's Business at the Mesquite Facility is prevented by an Event of Force Majeure;
11. The Company shall have purchased at least fifty percent (50%) of the Company's plumbing "cost of sales - materials" (defined in Article VII) from a supplier who shipped plumbing materials, parts and supplies to the Company from a location in the City from the Move-In Date and continuously thereafter until and including the date of the Payment Request;
12. The Company shall have delivered to the City within thirty (30) days after written request, copies of such documentation as the City may reasonably request to confirm compliance by the Company with the Conditions Precedent set forth in this Agreement;
13. (i) Neither the Company, 75032 and/or any Person acting on behalf of the Company and/or 75032, shall have protested, challenged or appealed the assessed value of the Land, the Building and/or the Business Personal Property as determined by DCAD for the Incentive Tax Year for which the Payment Request is being made unless such protest, challenge or appeal is an Acceptable Protest; and (ii) the time for any protest, challenge or appeal for such Tax Year shall have passed;
14. For any Incentive Tax Year in which the Company, 75032 and/or any Person acting on behalf of the Company and/or 75032 has filed an Acceptable Protest of the assessed value of the Land and Building, the Dallas County Appraisal Review Board shall have: (i) entered a written order determining the fair market value of the Land and Building for such Incentive Tax Year is at least equal to or greater than the Base Taxable Value of the Land and Building; (ii) such written order shall have become a final, non-appealable decision and all administrative remedies shall have been exhausted; and (iii) if such decision is appealed to District Court, the written order of the District Court conducting a judicial review of the appraised value of the Land and Building for such Incentive Tax Year shall have determined that the fair market value of the Land and Building for such Incentive Tax Year is at least equal to or greater than the Base Taxable Value of the Land and Building and such order shall have become a final, non-appealable decision;
15. For any Incentive Tax Year in which the Company and/or any Person acting on behalf of the Company has filed an Acceptable Protest of the assessed value of the Business Personal Property, the Dallas County Appraisal Review Board shall have: (i) entered a written order determining the fair market value of the Business Personal Property for such Incentive Tax Year is at least equal to or greater than the Base Taxable Value of the Business Personal Property; (ii) such written order shall have become a final, non-appealable decision and all administrative remedies shall have been exhausted; and (iii) if such decision is appealed to District Court, the written order of the District Court conducting a judicial review of the appraised value of the Business Personal Property for

such Incentive Tax Year shall have determined that the fair market value of the Business Personal Property for such Incentive Tax Year is at least equal to or greater than the Base Taxable Value of the Business Personal Property and such order shall have become a final, non-appealable decision;

16. The Company shall have timely kept and performed all terms, provisions, covenants, conditions and agreements to be kept or performed by the Company pursuant to the terms of this Agreement and no Default by the Company shall then exist and no event shall exist which, but for notice, the lapse of time, or both, would constitute a Default by the Company under the terms of this Agreement;
17. 75032 shall have timely kept and performed all terms, provisions, covenants, conditions and agreements to be kept or performed by 75032 pursuant to the terms of this Agreement and no Default by 75032 shall then exist and no event shall exist which, but for notice, the lapse of time, or both, would constitute a Default by 75032 under the terms of this Agreement;
18. At the option of the City, the City shall have inspected the Mesquite Facility to confirm the Company's compliance with the terms and provisions of this Agreement; and
19. As of the date of the Payment Request, and at all times during the Term of this Agreement prior to the Payment Request, the Company shall not have knowingly employed Undocumented Workers to work for the Company at or from the Mesquite Facility or at any other branch, division or department of the Company.

## ARTICLE IX

### Grants Payable in Annual Installments

9.1 Grants Payable in Annual Installments. Provided all Conditions Precedent have been satisfied and are then continuing, the City shall pay the Company annual Incentive Payments for each Incentive Tax Year during the Incentive Period measured according to the following calculations:

- (i) 50% of the sum paid by the Company and/or 75032 to the City for ad valorem taxes assessed against the Land and Building for each Incentive Tax Year;
- (ii) 50% of the sum paid by the Company to the City for ad valorem taxes assessed against the Business Personal Property for each Incentive Tax Year; and
- (iii) 50% of the sum paid by In-House Suppliers to the City for ad valorem taxes assessed against Inventory owned by In-House Suppliers located at the Mesquite Facility for each Incentive Tax Year *provided* such Inventory is purchased by the Company and is shipped to the Company from the Mesquite Facility and *further provided* the City is the local taxing jurisdiction with authority to collect ad valorem taxes in connection with such Inventory.

9.2 Payment Date for Grants Payable in Annual Installments. Provided all Conditions Precedent have been satisfied and are then continuing, the Incentive Payments due and payable pursuant to Sections 9.1(i), 9.1(ii) and 9.1(iii) of this Agreement shall be paid by the City to the Company on or before June 15<sup>th</sup> of the calendar year following the Incentive Tax Year for which the Incentive Payment is payable. For illustration purposes only, the Incentive Payments payable pursuant to Sections 9.1(i), 9.1(ii) and 9.1(iii) of this Agreement for the first Incentive Tax Year [i.e. 2016] shall be due and payable on or before June 15, 2017 and the Incentive Payments payable pursuant to Sections 9.1(i), 9.1(ii) and 9.1(iii) of this Agreement for the last Incentive Tax year [i.e. 2025] shall be due and payable on or before



June 15, 2026. If an Acceptable Protest is filed for any Incentive Tax Year, the payment date for grants payable pursuant to Sections 9.1(i) and 9.1(ii) above shall be delayed until sixty (60) days after all Conditions Precedent including, without limitation, the Conditions Precedent set forth in Article VIII, Sections 14 and 15 have been satisfied.

9.3 Funds Available for Grants Payable in Annual Installments. The grants of economic development incentives payable in annual installments by the City to the Company as more fully set forth in this Agreement are not secured by a pledge of ad valorem taxes or financed by the issuance of any bonds or other obligations payable from ad valorem taxes of the City. All Incentive Payments payable in annual installments by the City under the terms of this Agreement shall be paid only from funds lawfully available for the payment of such Incentive Payments. The Parties agree that, in the event all Conditions Precedent have been satisfied and are then continuing and the City fails to pay all Incentive Payments due under the terms and subject to the provisions and conditions set forth in this Agreement, and such failure continues for sixty (60) days after written notice from Company, then such failure shall be considered a “Default” as defined in Article XI below.

## ARTICLE X

### Grants Payable in Quarterly Installments

10.1 Grants Payable in Quarterly Installments. Provided all Conditions Precedent have been satisfied and are then continuing, the City shall pay the Company quarterly Incentive Payments measured according to the following calculations:

- (i) 50% of the Net City Sales Taxes paid to the City during each Calendar Quarter of the Incentive Period for Inventory purchased by the Company from In-House Suppliers **provided:** (a) such Inventory was shipped by such In-House Suppliers to the Company from the Mesquite Facility; (b) the Company paid the City Sales Taxes incurred in connection with the purchase of such Inventory to the In-House Suppliers; (c) the In-House Suppliers paid the City Sales Taxes incurred in connection with the purchase of such Inventory to the State Comptroller for further remittance to the City; and (d) the City is the local taxing jurisdiction with authority to collect local sales taxes in connection with the sale/purchase of such Inventory; and
- (ii) 50% of the Net City Sales Taxes paid by the Company to the City during each Calendar Quarter of the Incentive Period.

10.2 Payment Date for Grants Payable in Quarterly Installments. Provided all Conditions Precedent have been satisfied and are then continuing, the Incentive Payments due and payable pursuant to Sections 10.1(i) and 10.1(ii) of this Agreement shall be paid by the City to the Company on or before the 15<sup>th</sup> day of the fourth calendar month following the end of the Calendar Quarter for which the Incentive Payment is payable. For illustration purposes only, the Incentive Payments payable pursuant to Sections 10.1(i) and 10.1(ii) of this Agreement for the Calendar Quarters during the first calendar year of the Incentive Period [i.e. 2016] shall be due and payable as follows: (i) on or before July 15, 2016 for the Calendar Quarter commencing January 1, 2016 and ending March 31, 2016; (ii) on or before October 15, 2016 for the Calendar Quarter commencing April 1, 2016 and ending June 30, 2016; (iii) on or before January 15, 2017, for the Calendar Quarter commencing July 1, 2016 and ending September 30, 2016; and (iv) on or before April 15, 2017, for the Calendar Quarter commencing October 1, 2016 and ending December 31, 2016.

10.3 Funds Available for Grants Payable in Quarterly Installments. The grants of economic development incentives payable in quarterly installments by the City to the Company as more fully set forth in this Agreement are not secured by a pledge of ad valorem taxes or financed by the issuance of any bonds or other obligations payable from ad valorem taxes of the City. All Incentive Payments payable in

quarterly installments by the City under the terms of this Agreement shall be paid only from funds lawfully available for the payment of such Incentive Payments.

10.4 Revenue Sharing Agreement. The Parties designate this Agreement as a revenue sharing agreement, thereby entitling the City to request sales tax information from the State Comptroller, pursuant to §321.3022 of the Texas Tax Code, as amended and/or replaced.

ARTICLE XI

Defaults  
Recapture of Incentives  
Remedies

11.1 Default. A Party shall be in default of this Agreement if such Party fails to timely keep or perform any term, provision, covenant, condition, obligation or agreement to be kept or performed by such Party under the terms of this Agreement and such failure continues for sixty (60) days after written notice by the non-defaulting Party to the defaulting Party (a “Default”).

11.2 Recapture of Incentive Payments. In the event of a Default by the Company and/or 75032 under the terms of this Agreement, the City shall have the right to terminate this Agreement by written notice to the Company and 75032 in which event the City shall have no obligation to make any further Incentive Payments to the Company and the Company shall immediately pay to the City, at the City’s address set forth in Section 12.2 of this Agreement, or such other address as the City may hereafter notify the Company in writing, the sum equal to the following percentage amounts of all Incentive Payments paid by the City to the Company under the terms of this Agreement plus interest at the rate equal to the *lesser* of: (i) the Highest Lawful Rate; or (ii) five percent (5%) per annum, such interest to be calculated on the percentage of each Incentive Payment being recaptured from the date each such Incentive Payment was paid by the City to the Company until the date the percentage stated below of each such Incentive Payment is repaid by the Company to the City and such interest rate shall adjust periodically as of the date of any change in the Highest Lawful Rate, to-wit:

Date of Default	Percentage of Incentive Payments Recaptured
If the Default occurs at any time during the period from the Effective Date until and including December 31, 2018	100%
If the Default occurs at any time during the period beginning January 1, 2019 until and including December 31, 2020	60%
If the Default occurs at any time during the period beginning January 1, 2021 until and including December 31, 2022	20%
If the Default occurs at any time during the period beginning January 1, 2023 until and including June 30, 2026	0%

In the event the Company fails to timely pay any sums due by the Company to the City pursuant to this Section 11.2, the City shall have the right to exercise any and/or all rights and/or remedies available to the City pursuant to the laws of the State of Texas to collect such sums including, without limitation, the institution of a suit in a court of competent jurisdiction seeking a judgment against the Company for all sums due by the Company to the City pursuant to this Section 11.2, together with attorney’s fees and court costs.

11.3 Remedies. Upon the occurrence of a Default, the non-defaulting Party shall have the right to terminate this Agreement by written notice to the defaulting Party and shall further have the right to exercise any and/or all other rights and/or remedies available to the non-defaulting Party pursuant to the laws of the State of Texas. In the event the City is the defaulting Party and the Company and 75032 are non-defaulting Parties, then the City shall have no right to recapture any Incentive Payments paid to the Company.

11.4 Survival. All terms, provisions, covenants, obligations, rights and remedies of each Party pursuant to this Article XI shall expressly survive the termination of this Agreement provided, however, any cause of action, suit or other proceeding at law or in equity to exercise such rights and remedies or to enforce such terms, provisions, covenants or obligations must be commenced within four (4) years after the termination of this Agreement.

## ARTICLE XII

### Miscellaneous Provisions

12.1 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their respective successors and permitted assigns provided, however, notwithstanding anything contained herein to the contrary, this Agreement and the rights and obligations of the Company and 75032 hereunder may not be assigned or transferred by the Company and/or 75032 to any Person without the prior written consent of the City which may be withheld in the City's sole discretion. The sale, transfer or assignment of a controlling interest in the shares of the Company shall constitute an assignment of this Agreement and the failure of the Company to obtain the prior written consent of the City prior to such sale, transfer or assignment of shares shall be an attempted assignment of this Agreement in violation of this Agreement. The sale, transfer or assignment of a controlling interest in the shares of a corporation or the membership interests of a limited liability company that is the general or managing partner of 75032 shall constitute an assignment of this Agreement and the failure of the Company and/or 75032 to obtain the prior written consent of the City prior to such sale, transfer or assignment of such shares or membership interests shall be an attempted assignment of this Agreement in violation of this Agreement. Neither the Company, 75032 or any approved assignee or their legal representatives or successors in interest shall, by operation of law or otherwise, assign, mortgage, pledge, encumber or otherwise transfer this Agreement or any part hereof, or the interest of the Company, 75032 or any approved assignee under this Agreement, without obtaining the City's prior written consent, which may be given or withheld in the City's sole discretion. Any consent by the City to any assignment of this Agreement shall be held to apply only to the specific transaction thereby authorized and shall not constitute a waiver of the necessity for such consent to any subsequent assignment. Every assignee shall be subject to and be bound by all the provisions, covenants, and conditions of this Agreement and shall be required to obtain the prior written consent of the City with respect to any future or further assignment. Any attempted assignment in violation of the terms and provisions of this Agreement shall be void and shall constitute a material breach of this Agreement and in the event the Company and/or 75032 attempts to assign this Agreement in violation of this Section 12.1, the City shall have the right to terminate this Agreement by written notice to the Company and 75032.

12.2 Notices. Any notice and/or certificate or statement required or permitted to be given under the terms of this Agreement shall be in writing and shall be considered properly given if mailed by United States mail, certified mail, return receipt requested, in a postage paid envelope addressed to the Party at the address set forth below, or by delivering same in person to the intended addressee by hand delivery or by a nationally recognized courier service such as Federal Express or United Postal Service. Notices mailed by certified mail as set forth above shall be effective upon deposit in the United States mail. Notice given in any other manner shall be effective only if and when received by the addressee. For purposes of notice, the addresses of the Parties shall be as set forth below; provided, however, that any Party shall have the right to change such Party's address for notice purposes by giving the other Party at least thirty (30) days prior written notice of such change of address in the manner set forth herein:

COMPANY: Baker Brothers Rotovision, Inc.  
3520 Dilido Road  
Dallas, Texas 75228

With a Copy to: William D. Houser  
Jordan, Houser & Flournoy, LLP  
701 Justin Road  
Rockwall, Texas 75087

75032: 75032 Investments, LLC  
3520 Dilido Road  
Dallas, Texas 75228

With a Copy to: William D. Houser  
Jordan, Houser & Flournoy, LLP  
701 Justin Road  
Rockwall, Texas 75087

CITY: City of Mesquite  
1515 N. Galloway Avenue  
Mesquite, TX 75149  
Attention: City Manager

With a copy to: Paula Anderson  
Deputy City Attorney  
City of Mesquite  
1515 N. Galloway Ave.  
Mesquite, Texas 75149

12.3 Remedies Cumulative. Each right and remedy of the Parties provided for in this Agreement or now or hereafter existing pursuant to the laws of the State of Texas shall be cumulative and concurrent and shall be in addition to every other right or remedy provided for in this Agreement or now or hereafter existing pursuant to the laws of the State of Texas.

12.4 Captions. The descriptive captions of this Agreement are for convenience of reference only and shall in no way define, describe, limit, expand or affect the scope, terms, conditions, or intent of this Agreement.

12.5 Modification. This Agreement may only be revised, modified or amended by a written document signed by the City, the Company and 75032. Oral revisions, modifications or amendments are not permitted.

12.6 Interpretation. Regardless of the actual drafter of this Agreement, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against any Party.

12.7 Waivers. All waivers, to be effective, must be in writing and signed by the waiving party. No failure by any Party to insist upon the strict or timely performance of any covenant, duty, agreement, term or condition of this Agreement shall constitute a waiver of any such covenant, duty, agreement, term or condition. No delay or omission in the exercise of any right or remedy accruing to any Party upon a Default of this Agreement shall impair such right or remedy or be construed as a waiver of any such breach or a waiver of any breach theretofore or thereafter occurring.

12.8 Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Texas and venue shall lie exclusively in Dallas County, Texas.

12.9 Severability. The sections, paragraphs, sentences, clauses, and phrases of this Agreement are severable and, if any phrase, clause, sentence, paragraph, or section of this Agreement should be declared invalid, illegal or unenforceable by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect the validity or enforceability of any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Agreement and such remaining provisions shall remain in full force and effect and shall be construed and enforced as if the invalid provision had never been included in the Agreement.

12.10 No Partnership or Joint Venture. Nothing contained in this Agreement shall be deemed or construed by the Parties hereto, nor by any third party, as creating the relationship of partnership or joint venture between the Parties.

12.11 No Third Party Beneficiaries. The Parties to this Agreement do not intend to create any third party beneficiaries of the contract rights contained herein. This Agreement shall not create any rights in any individual or entity that is not a signatory hereto. No person who is not a party to this Agreement may bring a cause of action pursuant to this Agreement as a third party beneficiary.

12.12 Number and Gender. Whenever used herein, unless the context otherwise provides, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all other genders.

12.13 Counterparts. This Agreement may be executed in any number of original, facsimile or electronically-scanned counterparts, each of which shall be considered an original and all of which shall be considered one and the same instrument.

12.14 Entire Agreement. This Agreement sets forth the entire agreement between the Parties with respect to the subject matter hereof, and all prior discussions, representations, proposals, offers, and oral or written communications of any nature are entirely superseded hereby and extinguished by the execution of this Agreement. There are no oral agreements between the Parties.

12.15 Authority. Each Party represents and warrants to each other Party that this Agreement has been duly authorized by such Party and that each Party has the full power and authority to enter into and fulfill its obligations under this Agreement. Each Person signing this Agreement represents that such Person has the authority to sign this Agreement on behalf of the Party indicated.

12.16 City Council Authorization. This Agreement was authorized by resolution of the City Council approved at a City Council meeting.

12.17 Usury Savings Clause. Notwithstanding anything contained in this Agreement to the contrary, in no event shall any interest paid or collected or to be paid or collected under the terms of this Agreement exceed the maximum rate or amount of non-usurious interest that may be contracted for, taken, reserved, charged, or received under applicable law. Any interest in excess of that maximum amount will be refunded.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by their duly authorized agents, officers and/or officials on the dates set forth below.

**ATTEST:**

By: *Sonja Land*  
Sonja Land  
City Secretary  
Date: 8/13/15

**CITY OF MESQUITE,  
a Texas home rule municipality**

By: *Tea Barron*  
Name: Tea Barron  
Title: City Manager  
Date: 8/13/15

**APPROVED AS TO FORM:**

*Paula Anderson*  
City Attorney or his Designee

**COMPANY:**

**BAKER BROTHERS ROTOVISION, INC.,  
a Texas corporation**

By: *Jim Dale Jr.*  
Name: Jim Dale Jr.  
Title: President  
Date: 8/12/15

**75032:**

**75032 INVESTMENTS, LLC,  
a Texas limited liability company**

By: *Jim Dale Jr.*  
Its Managing Partner  
By: *Jim Dale Jr.*  
Name: Jim Dale Jr.  
Title: Managing Partner  
Date: 8/12/15

**EXHIBIT "A"**  
**TO**  
**ECONOMIC DEVELOPMENT PROGRAM AGREEMENT**

**Legal Description of Land**

DESCRIPTION, of a 5.710 acre tract of land situated in the William A. Cole Survey, Abstract No. 261, City of Mesquite, Dallas County, Texas; said tract being all of that tract of land described in General Warranty Deed to Cummins Southern Plains, LLC, f/k/a Cummins Red River Diesel, LLC recorded in Instrument No. 20080004867 of the Official Public Records of Dallas County, Texas; said 5.710 acre tract being more particularly described as follows:

BEGINNING, at a 1/2-inch iron rod found for the northeast corner of said Cummins Southern Plains, LLC tract, and being the southeast corner of a tract of land described in the Special Warranty Deed with Vendor's Lien to #HWH Real Estate Holding Co., #1, L.L.C. recorded in Instrument No. 201000293885 of said Official Public Records, said point being in the west right-of-way line of Big Town Boulevard (a variable width right-of-way);

THENCE South 00 degrees, 46 minutes, 27 seconds East, along the said west line of Big Town Boulevard, a distance of 438.58 feet to an "X" cut in concrete set for the southeast corner of said Cummins Southern Plains, LLC tract; said point being the point of intersection of the west line of Big Town Boulevard with the north line of Lot 1, Block A, The Villa Inn Addition, an addition to the City of Mesquite, Texas according to the plat recorded in Volume 72036, Page 1775, Map Records of Dallas County, Texas;

THENCE North 89 degrees, 56 minutes, 27 seconds West, departing the said west line of Big Town Boulevard and along the north line of said Lot 1, a distance of 567.20 feet to a 1/2-inch iron rod found for the southwest corner of said Cummins Southern Plains, LLC tract, said point being the northwest corner of said Lot 1, and being in the east line of a tract of land described in deed to the State of Texas recorded in Volume 3820, Page 633, Deed Records of Dallas County, Texas;

THENCE North 00 degrees, 46 minutes, 27 seconds West, along the east line of said State of Texas tract, a distance of 438.58 feet to a point for the northwest corner of said Cummins Southern Plains, LLC tract, said point being the southwest corner of said #HWH Real Estate Holding Co., #1, L.L.C. tract; from said point a 1/2-inch iron rod found bears North 70 degrees, 32 minutes East, a distance of 0.3 feet;

THENCE South 89 degrees, 56 minutes, 27 seconds East, departing the east line of said State of Texas tract and along the south line of said #HWH Real Estate Holding Co., #1, L.L.C. tract, a distance of 567.20 feet to the POINT OF BEGINNING.

CONTAINING: 248,736 square feet or 5.710 acres of land, more or less.