

RESOLUTION NO. 58-2018

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, CONSENTING TO THE ASSIGNMENT BY BAKER BROTHERS ROTOVISION, INC., TO BAKER BROTHERS LLC, OF ITS INTEREST IN THAT CERTAIN ECONOMIC DEVELOPMENT PROGRAM AGREEMENT (CHAPTER 380 AGREEMENT) DATED AUGUST 13, 2015, BETWEEN BAKER BROTHERS ROTOVISION, INC., AND THE CITY OF MESQUITE, TEXAS, RELATING TO ECONOMIC DEVELOPMENT INCENTIVES IN CONNECTION WITH A BUSINESS LOCATED AT 2615 BIG TOWN BOULEVARD, MESQUITE, TEXAS; APPROVING AN AMENDMENT OF THE CHAPTER 380 AGREEMENT; AND AUTHORIZING THE CITY MANAGER TO EXECUTE ALL DOCUMENTS NECESSARY OR REQUESTED IN CONNECTION THEREWITH.

WHEREAS, pursuant to Resolution No. 27-2015, the City of Mesquite, Texas (the "City"), Baker Brothers Rotovision, Inc., and 75032 Investments, LLC (property owner), entered into an Economic Development Program Agreement dated August 13, 2015, relating to economic development incentives in connection with a business located at 2615 Big Town Boulevard, Mesquite, Texas (the "Chapter 380 Agreement"); and

WHEREAS, pursuant to the Chapter 380 Agreement, any assignment of the agreement by Baker Brothers Rotovision, Inc. [or transfer of a majority of its shares], requires the prior written consent of the City; and

WHEREAS, pursuant to Resolution No. 11-2017, the City consented to Fort Acquisition Corp. acquiring 100 percent of the shares of Baker Brothers Rotovision, Inc.; and

WHEREAS, the Chief Financial Officer for Baker Brothers Rotovision, Inc., advised the City that Baker Brothers Rotovision, Inc., will no longer be a going concern and is transferring all of its assets to Baker Brothers LLC, a Delaware limited liability company; and

WHEREAS, Wrench Group, LLC is the sole owner of both Fort Acquisitions Corp. and Baker Brothers LLC; and

WHEREAS, Baker Brothers Rotovision, Inc., is requesting that the City enter into an agreement: (i) consenting to the transfer of the Chapter 380 Agreement to Baker Brothers LLC; (ii) waiving the requirement that the consent be obtained prior to such transfer; and (iii) amending the Chapter 380 Agreement to add for 90 days from the effective date of the agreement and then substitute Baker Brothers LLC, for Baker Brothers Rotovision, Inc., as the party to the Chapter 380 Agreement, a true and correct copy of such agreement being attached hereto as Exhibit "A" and made a part hereof for all purposes (the "Agreement").

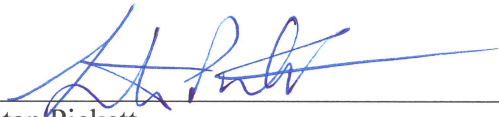
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

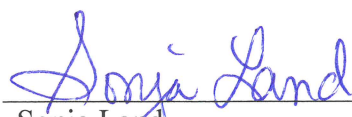
SECTION 1. That the City Council: (i) consents to the assignment by Baker Brothers Rotovision, Inc., to Baker Brothers LLC, of its interest in the Chapter 380 Agreement; (ii) waives the requirement for Baker Brothers Rotovision, Inc. to obtain the City's prior written consent to the assignment of the Chapter 380 Agreement to Baker Brothers LLC only; and (iii) agrees to amend the Chapter 380 Agreement to add for 90 days from the effective date of the Agreement and then substitute Baker Brothers LLC for Baker Brothers Rotovision, Inc. as the party to the Chapter 380 Agreement.

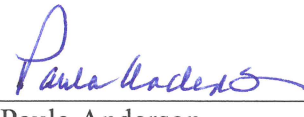
SECTION 2. That the terms and provisions of the Agreement are hereby approved.

SECTION 3. That the City Manager is hereby authorized to execute the Agreement and all other documents necessary or requested to consummate the transactions contemplated by the Agreement.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 15th day of October, 2018.

  
\_\_\_\_\_  
Stan Pickett  
Mayor

ATTEST:  
  
\_\_\_\_\_  
Sonja Land  
City Secretary

APPROVED:  
  
\_\_\_\_\_  
Paula Anderson  
Interim City Attorney

**AGREEMENT**

This Agreement ("Agreement") is executed by and between the City of Mesquite, a Texas home rule municipality (the "City"), Baker Brothers Rotovision, Inc., a Texas corporation (the "First Company"), Baker Brothers LLC, a Delaware limited liability company (the "Second Company"), 75032 Investments, LLC, a Texas limited liability company ("75032"), Fort Acquisition Corp, a Delaware corporation ("Fort Acquisition Corp."), and Wrench Group LLC, a Delaware limited liability company ("Wrench Group"). Each of the foregoing are sometimes referred to individually as a "Party" and sometimes referred to collectively as the "Parties".

WHEREAS, the City, the First Company and 75032 entered into an Economic Development Program Agreement (Chapter 380 Agreement) dated effective August 13, 2015 (the "380 Agreement"); and

WHEREAS, the City, the First Company, 75032 and Fort Acquisition Corp. entered into an Agreement effective April 26, 2017 whereby the City consented to Fort Acquisition Corp. acquiring one hundred percent (100%) of the shares of the First Company; and

WHEREAS, pursuant to Section 12.1 of the 380 Agreement, the rights and obligations of the First Company under the terms of the 380 Agreement may not be assigned or transferred by the First Company without the prior written consent of the City which may be withheld in the City's sole discretion; and

WHEREAS, the First Company has advised the City that it will no longer be a going concern and that it is assigning all of its assets, liabilities, rights and obligations (including those under the 380 Agreement) to the Second Company ("the LLC Transfer"); and

WHEREAS, Wrench Group is the sole owner of both Fort Acquisition Corp. and Second Company; and

WHEREAS, the LLC Transfer is the assignment of the rights and obligations of the First Company under the 380 Agreement, and as such would require the prior written consent of the City pursuant to Section 12.1 of the 380 Agreement; and

WHEREAS, the First Company has requested that the City consent to the LLC Transfer and has further requested that the City waive, for the LLC Transfer only, the requirement under Section 12.1 of the Agreement that the First Company obtain the prior written consent of the City to the LLC Transfer.

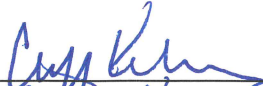
NOW, THEREFORE, for and in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed, the Parties hereto agree as follows:

1. **That the City consents to the LLC Transfer and to waive**, as to the LLC Transfer only, the requirement under Section 12.1 of the 380 Agreement that the First Company obtain the prior written consent of the City to the LLC Transfer.
2. That the Parties hereby agree to amend the 380 Agreement so that all references in the 380 Agreement to the First Company (Baker Brothers Rotovision, Inc.) shall for a period of 90 days from the effective date of this Agreement be deemed to also include the Second Company (Baker Brothers LLC), and at the end of that 90-day period the Second Company (Baker Brothers LLC) shall be *substituted* into the 380 Agreement for the First Company (Baker Brothers Rotovision, Inc.) for all purposes. Other than the amendment set forth in this Section, the Parties acknowledge and agree that the 380 Agreement is not otherwise being amended.
3. That the First Company, the Second Company, 75032, Fort Acquisition Corp. and Wrench Group each acknowledge and agree that: (i) all terms, provisions, agreements, covenants and conditions of the 380 Agreement, as amended in Section 2 of this Agreement, shall remain in full force and effect; and (ii) that the consent and waiver set forth in Section 1 of this Agreement shall not: (a) release the Second Company and/or 75032 from any obligations under the terms of the 380 Agreement, as amended, including, without limitation, the obligation of the Second Company and 75032 to timely keep and perform all terms, provisions, agreements, covenants and conditions to be kept or performed by the Second Company and 75032 under the terms of the 380 Agreement, as amended; or (b) affect or impair the rights and remedies of the City pursuant to the terms of the 380 Agreement.
4. Each Party further acknowledges and agrees that the consent and waiver set forth in Section 1 of this Agreement shall apply only to the LLC Transfer and such consent and waiver shall not be interpreted or construed as: (i) the consent to any sale, transfer or assignment of a controlling interest in the membership interest(s) of the Second Company; (ii) the consent of any assignment or transfer of the Second Company's rights and obligations under the 380 Agreement; (iii) the consent to any 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; (iv) the consent to any future assignment of the 380 Agreement to any person or entity; or (v) the waiver of the requirement to obtain the prior written consent of the City to any future assignment of the 380 Agreement or the rights and obligation thereunder.
5. This Agreement contains the entire agreement of the Parties with respect to the matters set forth herein and may be amended only by a written document signed by all the Parties.

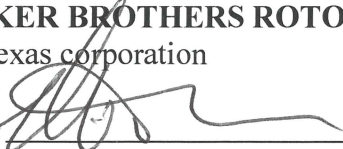
6. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Texas (without giving effect to any conflict of law principles that would result in the application of the laws of any state other than Texas). The Parties agree that venue of any suit, action or proceeding arising from or relating to this Agreement or to construe or enforce this Agreement shall lie exclusively in state courts in Dallas County, Texas and each Party waives the right to challenge the venue of such courts or to seek the transfer of such suit, action or proceeding to a more convenient forum or to a Federal Court.
7. The provisions of this Agreement are severable and, if any provision 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 provisions 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.
8. 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.
9. The Parties do not intend to create any third party beneficiaries of the contract rights contained herein. 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.
10. This Agreement may be executed in any number of original, facsimile, digital or electronically scanned counterparts, each of which shall be considered an original and all of which shall be considered one and the same instrument.
11. The First Company, the Second Company, 75032, Fort Acquisition Corp., and Wrench Group each represent that it is duly formed, validly existing and in good standing under the laws of the state of its formation and is duly authorized to transact business in the State of Texas. 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 this Agreement and to fulfill its obligations under this Agreement. Each person signing this Agreement represents that such person has the authority to sign the Agreement on behalf of the Party indicated.

This Agreement shall be effective as of the latest date set forth below.

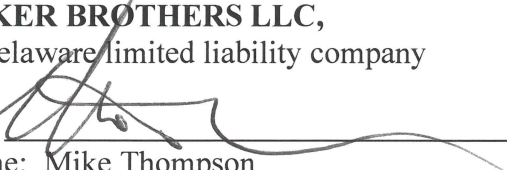
**CITY OF MESQUITE,**  
A Texas home rule municipality

By:   
Name: Cliff Kenworthy  
Title: CITY MANAGER  
Execution Date: 2-5-19

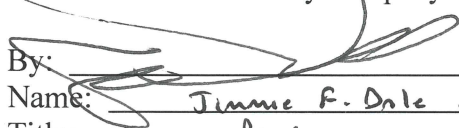
**BAKER BROTHERS ROTOVISION, INC.,**  
A Texas corporation

By:   
Name: Mike Thompson  
Title: CFO  
Execution Date: 1/18/19

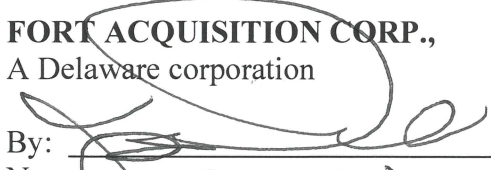
**BAKER BROTHERS LLC,**  
A Delaware limited liability company

By:   
Name: Mike Thompson  
Title: CFO  
Execution Date: 1/18/19

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

By:   
Name: Jimmie F. Dale Jr  
Title: Partner  
Execution Date: 1/18/19

**FORT ACQUISITION CORP.,**  
A Delaware corporation

By:   
Name: Jimmie F. Dale Jr  
Title: President  
Execution Date: 1/18/19

**WRENCH GROUP LLC,**  
A Delaware limited liability company

By: 

Name: Mike Thompson

Title: CFO

Execution Date: 1/18/19