

RESOLUTION NO. 75-2018

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A PROGRAM TO PROMOTE LOCAL ECONOMIC DEVELOPMENT AND STIMULATE BUSINESS AND COMMERCIAL ACTIVITY IN THE CITY; AUTHORIZING THE CITY MANAGER TO FINALIZE AND EXECUTE AN AGREEMENT FOR SUCH PURPOSES WITH SUNDANCE MC, LLC, FOR THE DEVELOPMENT OF TWO CORPORATE HANGARS AT MESQUITE METRO AIRPORT; AND AUTHORIZING THE CITY MANAGER TO ADMINISTER THE AGREEMENT ON BEHALF OF THE CITY.

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

WHEREAS, the City Council has been presented with a proposed agreement providing economic incentives to Sundance MC, LLC (the “Company”), for the proposed development of two corporate hangars at Mesquite Metro Airport, 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 local 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 and the Company, a copy of which is attached hereto as Exhibit “A” and incorporated herein by reference, will benefit the City and will accomplish the public purpose of promoting local economic development and stimulating business and commercial activity in the City in accordance with Section 380.001 of the Texas Local Government Code.

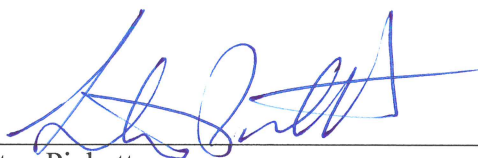
SECTION 2. That the City Council hereby adopts an economic development program whereby, subject to the terms and conditions of the Agreement, the City will provide economic development incentives to the Company and take other specified actions as more fully set forth in the Agreement in accordance with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

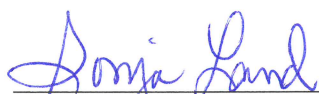
SECTION 5. That the City Manager is further hereby authorized to administer the Agreement on behalf of the City including, without limitation, the City Manager shall have the authority to: (i) provide any notices required or permitted by the Agreement; (ii) approve amendments to the Agreement provided such amendments, together with all previous amendments approved by the City Manager, do not increase City expenditures under the Agreement in excess of \$50,000; (iii) approve or deny any matter in the Agreement that requires the consent of the City provided, however, notwithstanding the foregoing, any assignment of the Agreement that requires the consent of the City pursuant to the terms of the Agreement shall require the approval of the City Council; (iv) approve or deny the waiver of performance of any covenant, duty, agreement, term or condition of the Agreement; (v) exercise any rights and remedies available to the City under the Agreement; and (vi) execute any notices, amendments, approvals, consents, denials and waivers authorized by this Section 5.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 17th day of December 2018.



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

ATTEST:



\_\_\_\_\_  
Sonja Land  
City Secretary

APPROVED:



\_\_\_\_\_  
David L. Paschall  
City Attorney

**EXHIBIT "A"**

**Sundance MC, LLC, Development Agreement**

# 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”) and SUNDANCE MC, LLC, a Texas limited liability company (the “Company”).

### WITNESSETH:

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

**WHEREAS**, the Company has agreed to enter into ground leases with the City to lease the properties commonly known as 1670 and 1680 Airport Boulevard, Mesquite, Texas 75181 (collectively the “Ground Leases”) and to construct two (2) corporate hangers at the Leased Premises consisting of at least 9,600 square feet each (the “Project Improvements”); and

**WHEREAS**, the Company has agreed to construct extensions of the public water and sewer lines as more fully set forth in **Exhibit “A”** attached hereto and made a part hereof for all purposes (the “Utility Improvements”) that will benefit not only the construction of the Project Improvements, but will also provide additional water and sewer availability for future aeronautical development on the City’s airport; and

**WHEREAS**, pursuant to the terms of the Ground Leases, the Project Improvements will be surrendered to the City at the termination of the Ground Leases which will benefit the City; and

**WHEREAS**, the Project Improvements will substantially increase the taxable value of the improvements on the Leased Premises thereby adding value to the City’s tax rolls and increasing the ad valorem taxes to be collected by the City; and

**WHEREAS**, the Project Improvements will further potentially increase the ad valorem personal property taxes to be collected by the City if the Leased Premises are the taxable situs of one or more aircraft used for business purposes as more fully set forth in V.T.C.A., Tax Code §21.055, as amended; and

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

**WHEREAS**, the Company has advised the City that a contributing factor inducing the Company to construct the Project Improvements and the Utility Improvements is the agreement by the City to provide the Economic Development Incentives to the Company under the terms and conditions more fully set forth in this Agreement; and

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

**WHEREAS**, the City Council finds and determines that this Agreement will effectuate the purposes set forth in the Program and that the Company’s performance of its obligations set forth in this Agreement will promote local economic development in the City, stimulate business and commercial activity in the City and benefit the City and its citizens.

**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 and confessed, the parties agree as follows:

## ARTICLE I

### Incorporation of Recitals

The foregoing recitals (“Recitals”) are incorporated into the body of this Agreement and shall be considered 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:

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

“Annual Incentive Payment” and “Annual 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 and limitations set forth in this Agreement to provide grants to the Company for the Incentive Period measured by the ad valorem business personal property taxes paid by the Company [or the Company’s assignee under any one or more of the Ground Leases] to the City in connection with the Project Improvements and any business aircraft whose taxable situs is the Leased Premises during the Incentive Period provided, however, notwithstanding anything contained herein to the contrary, the maximum amount of Annual Incentive Payments shall not exceed the collective amount of EIGHT THOUSAND EIGHT HUNDRED FIFTY AND NO/100 DOLLARS (\$8,850.00).

“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: (i) that 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 certificate issued by the City when a building or other structure is compliant with the City’s building, health, safety, fire and other codes and is in a condition suitable for occupancy.

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

“Company” shall mean SUNDANCE MC, LLC, a Texas limited liability company, its successors and assigns only as permitted by Article X, Section 1 of this Agreement.

“Company Representative” shall mean the President or any other duly authorized officer of the Company acting with authority on behalf of the Company.

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

“Default” shall have the meaning set forth in Article IX, Section 1 of this Agreement.

“Defaulting Party” shall have the meaning set forth in Article IX, Section 1 of this Agreement.

“Development Fees” shall mean the permit fee(s), inspection fee(s), engineering review fee(s) and engineering inspection fee(s) due and payable by the Company to the City in connection with the construction of the Project Improvements and the Utility Improvements.

“Development Fee Grant” shall have the meaning set forth in Article VIII, Section 1.

“Economic Development Incentive” shall mean an economic development grant or incentive described in Article VIII of this Agreement and “Economic Development Incentives” shall mean more than one or all of the economic development grants and incentives described in Article VIII of this Agreement.

“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 Bankruptcy or Insolvency” shall mean the dissolution or termination of a Party’s existence as a going business, insolvency, appointment of a receiver for any part of such Party’s property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, the voluntary commencement of any proceeding under any bankruptcy or insolvency laws by any Party, or the involuntary commencement of any proceeding against any Party under any bankruptcy or insolvency laws and such involuntary proceeding is not dismissed within ninety (90) days after the filing thereof.

“Ground Leases” shall have the meaning set forth in the Recitals to this Agreement;

“Incentive Period” shall mean the period commencing with January 1, 2019 and continuing until the earlier of: (i) December 31, 2021; or (ii) the date the Annual Incentive Payments paid by the City to the Company under the terms of this Agreement collectively equal EIGHT THOUSAND EIGHT HUNDRED FIFTY AND NO/100 DOLLARS (\$8,850.00); or (iii) the date this Agreement is terminated by the City pursuant to a right to terminate more fully set forth herein.

“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, 2019 and ending on December 31, 2019 and continuing on January 1st and ending on December 31st of each calendar year thereafter during the Incentive Period.

“Leased Premises” shall mean 1670 Airport Boulevard, Mesquite, Texas 75181 and 1680 Airport Boulevard, Mesquite, Texas 75181.

“Maximum Annual Incentive” shall mean EIGHT THOUSAND EIGHT HUNDRED FIFTY AND NO/100 DOLLARS (\$8,850.00).

“Maximum Lawful Rate” shall mean the maximum lawful rate of non-usurious interest that may be contracted for, charged, taken, received or reserved by the City in accordance with the applicable laws of the State of Texas (or applicable United States federal law to the extent that such law permits the City to contract for, charge, take, receive or reserve a greater amount of interest than under Texas law).

“Non-Defaulting Party” shall have the meaning set forth in Article IX, Section 1 of this Agreement.

“Party” shall mean either the Company or the City.

“Parties” shall mean both the Company and the City.

“Payment Request” shall mean a written request on behalf of the Company executed by a duly authorized Company Representative and delivered to the City’s Director of Finance requesting the payment of an Economic Development Incentive.

“Person” or “Persons” shall mean one or more individual(s) or corporation(s), general or limited partnership(s), limited liability company(s), trust(s), estate(s), unincorporated business(es), organization(s), association(s) or any other entity(s) of any kind.

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

“Project Improvements” shall have the meaning set forth in the Recitals to this Agreement.

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

“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) or any other applicable law or regulation.

“Utility Improvements” shall have the meaning set forth in the Recitals and in Article VI, Section 2 to this Agreement.

### 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 this Agreement will effectuate the purposes set forth in the Program and that the Company’s performance of its obligations herein will: (i) increase the amount of ad valorem business personal property taxes assessed and collected by the City; (ii) promote local economic development in the City, stimulate business and commercial activity in the City; and (iii) benefit the City and its citizens.

### ARTICLE IV

#### Term

The Term of this Agreement shall commence on the Effective Date and shall continue until the earlier of: (i) June 30, 2022; or (ii) the date this Agreement is terminated by the City or the Company pursuant to a right to terminate as expressly provided herein (the “Term”).

### ARTICLE V

#### Company’s Covenant Not to Employ Undocumented Workers

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.

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.

3. Repayment of Economic Development Incentives in Event of Conviction for Employing Undocumented Workers. If, after receiving any Economic Development Incentive 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 Economic Development Incentives previously 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 Maximum Lawful Rate; or (ii) five percent (5%) per annum, such interest rate to be calculated on the amount of each Economic Development Incentive being recaptured from the date each Economic Development Incentive 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 Maximum Lawful Rate.

4. Limitation on Economic Development Incentives. The City shall have no obligation to pay any Economic Development Incentive 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).

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 V including, without limitation, all remedies available pursuant to Chapter 2264 of the Texas Government Code.

6. Limitation. The Company is not liable for a violation of Article V of this Agreement by a subsidiary, affiliate, or franchisee of the Company, or by a person with whom the Company contracts.

7. Survival. The terms, provisions, covenants, agreements and obligations of the Company and the rights and remedies of the City set forth in Article V of this Agreement shall expressly survive the expiration or termination of this Agreement.

## ARTICLE VI

### Company's Additional Covenants

In consideration of the City's agreement to grant the Economic Development Incentives to the Company upon the terms and conditions more fully set forth herein, the Company represents, covenants and agrees as follows, to-wit:

1. Project Improvements. The Company will complete construction of the Project Improvements on or before November 1, 2019;

2. Utility Improvements. The Company will complete construction of the Utility Improvements substantially as set forth in **Exhibit A** on or before November 1, 2019;

3. Location and Dedication of Utility Improvements. The Company shall construct the Utility Improvements wholly within an area dedicated as a public right of way or public easement and shall dedicate the Utility Improvements to the City for public use;

4. Certificate of Occupancy. The Company will obtain a Certificate of Occupancy to occupy the Project Improvements on or before November 1, 2019;

5. Timely Payment of Development Fees. The Company shall timely pay all Development Fees to the City as and when due;

6. Timely Payment of Taxes. The Company shall timely pay all ad valorem taxes due and payable by the Company to the City as and when due;

7. Timely Reporting of Tail Numbers. The Company shall report tail numbers for all aircraft based at all or part of the Leased Premises to the General Manager of the City's airport within thirty (30) days of the aircraft arriving/departing the City's airport;

8. Performance of Agreement. The Company will timely keep and perform all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by the Company under the terms of this Agreement; and

9. Performance of Other Agreements. The Company will timely keep and perform all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by the Company under the terms of all other agreements now or hereafter existing between the Company and the City.

## ARTICLE VII

### Conditions Precedent to Payment of Economic Development Incentives

The Company and the City hereby expressly acknowledge and agree that the City's obligation to pay the Economic Development Incentives to the Company as set forth in Article VIII shall expressly be conditioned upon the satisfaction of each and every one of the following conditions precedent (sometimes referred to singularly herein as a "Condition Precedent" and sometimes collectively referred to as the "Conditions Precedent"), to-wit:

1. Payment Request. The Company shall have submitted a Payment Request to the City accompanied by a Certificate of Compliance dated effective as of the date of the Payment Request and, as of the date of the Payment Request, all other Conditions Precedent set forth herein shall have been satisfied and are then continuing;



2. Completion of Construction of Project Improvements and Utility Improvements. The Company shall have completed construction of the Project Improvements and the Utility Improvements, shall have dedicated the Utility Improvements to the City, and the City shall have accepted the dedication of the Utility Improvements;

3. Certificate of Occupancy for the Project Improvements. The Company shall have completed all requirements of the building permit issued by the City in connection with the construction of the Project Improvements and shall have obtained a Certificate of Occupancy for the Project Improvements;

4. Payment of Development Fees. The Company shall have timely paid all Development Fees to the City in connection with the Project Improvements and the Utility Improvements;

5. Performance of this Agreement. The Company shall have timely kept and performed all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by the Company under 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;

6. Performance of other Agreements. The Company shall have timely kept and performed all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by the Company under the terms of all other agreement(s) now and hereafter existing between the Company and the City and no default shall then exist under the terms of such agreement(s) 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 such agreement(s);

7. No Conviction for Undocumented Workers. 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 been convicted by a court of competent jurisdiction of knowingly employing Undocumented Workers to work for the Company at the Mesquite Facility or at any other branch, division or department of the Company; and

8. Maximum Annual Incentive. The amount of the Annual Incentive Payment being requested with the Payment Request, together with all previous Annual Incentive Payments shall not exceed the Maximum Annual Incentive.

## ARTICLE VIII

### Economic Development Incentives

1. Development Fee Grant. The City hereby approves, subject to the Conditions Precedent and the covenants and limitations set forth in this Agreement, the payment of an economic development grant to the Company in the amount equal to the Development Fees paid by the Company to the City up to the maximum collective amount of TWELVE THOUSAND NINE HUNDRED FIFTY AND NO/100 DOLLARS (\$12,950.00) (the "Development Fee Grant").

2. Payment of Development Fee Grant. Provided all Conditions Precedent have been satisfied and are then continuing, and subject to the covenants and limitations set forth in this Agreement, the City will pay the Development Fee Grant to the Company in one (1) installment within sixty (60) days after the Company has obtained a Certificate of Occupancy for the Project Improvements.

3. Annual Incentive Payments. For each Incentive Year, provided all Conditions Precedent have been satisfied and are then continuing, the City shall pay an Annual Incentive Payment to the Company in the amount equal to the ad valorem business personal property taxes paid by the Company [or the Company's assignee under any one or more of the Ground Leases] to the City in connection with the Project Improvements and any business aircraft whose taxable situs is the Leased Premises for such Incentive Year provided, however, notwithstanding anything contained herein to the contrary, in no event shall the collective amount of Annual Incentive Payments payable under the terms of this Agreement exceed EIGHT THOUSAND EIGHT HUNDRED FIFTY AND NO/100 DOLLARS (\$8,850.00).

4. Payment Date for Annual Incentive Payments. Provided all Conditions Precedent have been satisfied and are then continuing, including, without limitation, the Maximum Annual Incentive has not been satisfied, the Annual Incentive Payments due and payable pursuant to Article VIII, Section 3 of this Agreement shall be due and payable by the City to the Company on the later of: (i) April 1st of the calendar year following the Incentive Year

for which the Annual Incentive Payment is payable; or (ii) sixty (60) days after all Conditions Precedent to the payment of such Annual Incentive Payment have been satisfied.

5. Limitation on Economic Development Incentives. Notwithstanding anything contained herein to the contrary: (i) the maximum amount of the Development Fee Grant payable under the terms of this Agreement shall be TWELVE THOUSAND NINE HUNDRED FIFTY AND NO/100 DOLLARS (\$12,950.00); and (ii) the maximum amount of the Annual Incentive Payments payable under the terms of this Agreement shall be EIGHT THOUSAND EIGHT HUNDRED FIFTY AND NO/100 DOLLARS (\$8,850.00). If there is any conflict between this Article VIII, Section 5 and any other term or provision of this Agreement, this Article VIII Section 5, shall control.

6. Funds Available for Payment of Economic Development Incentives. The grant of the Economic Development Incentives payable 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. The Economic Development Incentives payable hereunder shall be paid only from funds of the City authorized by Article II, Section 52-a of the Texas Constitution and Texas Local Government Code Chapter 380. Each Economic Development Incentive is subject to the City's appropriation of funds for such purpose to be paid in the budget year for which such Economic Development Incentive is to be paid. This Article VIII, Section 6 shall expressly survive the expiration or termination of this Agreement.

## ARTICLE IX

### Defaults Recapture of Incentives Remedies

1. Default. A Party shall be in default of this Agreement (the "Defaulting Party"): (i) upon the occurrence of an Event of Bankruptcy or Insolvency of such Party; or (ii) if such Party fails to timely keep or perform any term, provision, agreement, covenant, condition or obligation 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 other Party (the "Non-Defaulting Party") (each a "Default").

2. 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 remedy available to the Non-Defaulting Party pursuant to the laws of the State of Texas.

3. Recapture of Economic Development Incentives. In the event of a Default by the Company under the terms of this Agreement, the Company shall immediately pay to the City, at the City's address set forth in Article X, Section 2 of this Agreement, or such other address as the City may hereafter notify the Company in writing, the amount equal to one hundred percent (100%) of the Economic Development Incentives previously 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 Maximum Lawful Rate; or (ii) five percent (5%) per annum, such interest rate to be calculated on each Economic Development Incentive being recaptured from the date each Economic Development Incentive 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 Maximum Lawful Rate. In the event the Company fails to timely pay any sums due by the Company to the City pursuant to this Article IX, Section 3, the Company shall be in breach of this Agreement and the City shall have the right, without further demand or notice to the Company, to exercise any and/or all rights and/or remedies available to the City pursuant to the laws of the State of Texas including, without limitation, institution of a suit in a court of competent jurisdiction, to collect such sums.

4. Survival. All terms, provisions, agreements, covenants, conditions, obligations, rights and remedies of each Party pursuant to this Article IX shall expressly survive the expiration or termination of this Agreement.

## ARTICLE X

### Miscellaneous Provisions

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 hereunder may not be

assigned or transferred by the Company to any Person without the prior written consent of the City which may be withheld in the City's sole discretion. In the event the Company is a corporation or limited liability company, the sale, transfer or assignment of a controlling interest in the shares of the Company or the sale, transfer or assignment of a controlling interest in the membership interests 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 such shares or membership interests shall be an attempted assignment of this Agreement in violation of this Agreement and shall constitute a breach of this Agreement by the Company. In the event the Company is a partnership, the sale, transfer or assignment of a controlling interest in the shares of a corporation or the membership interests of a limited liability company or the partnership interests of a partnership that is the Company's general or managing partner 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 such shares, membership interests or partnership interests shall be an attempted assignment of this Agreement in violation of this Agreement and shall constitute a breach of this Agreement by the Company. Furthermore, neither the Company nor 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 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 apply only to the specific transaction authorized and shall not constitute a waiver of the necessity for such consent to any subsequent assignment. Every assignee shall be subject to and 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 by the Company and in the event the Company attempts to assign this Agreement in violation of this Article X, Section 1, the City shall have the right to terminate this Agreement by written notice to the Company.

2. Notices. Any notice and/or certificate or statement required or permitted to be given to any Party under the terms of this Agreement shall be in writing and shall be considered properly given if sent by United States electronically tracked certified mail, return receipt requested, in a postage paid envelope addressed to the respective Party at the following addresses or by delivery of the notice in person to the intended addressee by hand delivery or by a nationally recognized courier service having the ability to track shipping and delivery of notices including but not limited to services such as Federal Express or United Parcel Service (UPS). Notices mailed by certified mail as set forth above shall be effective one (1) business day after deposit in the United States mail. Notices sent by a nationally recognized courier service as set forth above shall be effective one (1) business day after deposit with the nationally recognized courier service. Notices 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: Sundance MC, LLC  
2200 Victory Ave #2304  
Dallas, Texas 75219  
Attn: Larry King

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

With a copy to: Airport Director  
City of Mesquite  
1340 Airport Blvd.  
Mesquite, Texas 75181

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

3. Right to Offset. The City shall have the right to offset any amounts due and payable by the City under this Agreement against any debt (including taxes) lawfully due and owing by the Company to the City regardless of whether the amount due arises pursuant to the terms of this Agreement or otherwise, and regardless of whether or not the debt has been reduced to judgment by a court.

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.

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

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.

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.

8. Governing Law; Venue. 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 to construe or enforce this Agreement shall lie exclusively in state courts in Dallas County, Texas.

9. **WAIVER OF CONSEQUENTIAL, PUNITIVE OR SPECULATIVE DAMAGES.** THE COMPANY AND THE CITY AGREE THAT, IN CONNECTION WITH ANY ACTION, SUIT OR PROCEEDING ARISING FROM OR RELATING TO THIS AGREEMENT, EACH PARTY MUTUALLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY CLAIM FOR CONSEQUENTIAL, PUNITIVE OR SPECULATIVE DAMAGES.

10. 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.

11. 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. 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.

13. 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.

14. 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.

15. 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.

16. Authority. The Company represents 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. The Company represents that it has the full power and authority to enter into and fulfill its obligations under this Agreement and that the Person signing this Agreement on behalf of the Company has the authority to sign this Agreement on behalf of the Company.

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

18. Usury Savings Clause. The Company and City intend to conform strictly to all applicable usury laws. All agreements of the City and the Company are hereby limited by the provisions of this Article X, Section 18 which shall override and control all such agreements, whether now existing or hereafter arising and whether written or oral. In no event shall any interest contracted for, charged, received, paid or collected under the terms of this Agreement exceed the Maximum Lawful Rate or amount of non-usurious interest that may be contracted for, taken, reserved, charged, or received under applicable law. If, from any possible development of any document, interest would otherwise be payable to City in excess of the Maximum Lawful Rate, any such construction shall be subject to the provisions of this Article X, Section 18 and such document shall be automatically reformed and the interest payable to the City shall be automatically reduced to the Maximum Lawful Rate, without the necessity of execution of any amendment or new document. If the City shall ever receive anything of value which is characterized as interest under applicable law and which would apart from this provision be in excess of the Maximum Lawful Rate, an amount equal to the amount which would have been excessive interest shall at the option of the City be refunded to Company or applied to the reduction of the principal amount owing under this Agreement or such document in the inverse order of its maturity and not to the payment of interest. The right to accelerate any indebtedness does not include the right to accelerate any interest which has not otherwise accrued on the date of such acceleration, and City does not intend to charge or receive any unearned interest in the event of acceleration. All interest paid or agreed to be paid to the City shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full stated term (including any renewal or extension) of such indebtedness so that the amount of interest on account of such indebtedness does not exceed the Maximum Lawful Rate.

19. Indemnity. **COMPANY AGREES TO DEFEND, INDEMNIFY AND HOLD CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS, AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE, OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY COMPANY'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT, OR BY ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION OF COMPANY, ITS OFFICERS, AGENTS, ASSOCIATES, EMPLOYEES, AFFILIATES, CONTRACTORS, OR SUBCONTRACTORS, IN THE PERFORMANCE OF THIS AGREEMENT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS SECTION 19 SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF CITY, ITS OFFICERS, AGENTS, EMPLOYEES, OR SEPARATE CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRENT NEGLIGENCE/BREACH OF BOTH COMPANY AND CITY, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES TO THIS AGREEMENT AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.**

20. Non-Collusion. The Company represents and warrants that neither Company nor anyone on the Company's behalf has given, made, promised or paid, nor offered to give, make, promise or pay any gift, bonus, commission, money or other consideration to any employee, agent, representative or official of the City as an inducement to or in order to obtain the benefits to be provided by the City under this Agreement.

21. Date for Performance. If the time period by which any act required hereunder must be performed falls on a Saturday, Sunday, legal or City holiday, then such time period shall be automatically extended through the close of business on the next regularly scheduled business day.

22. Form 1295 Certificate. The Company agrees to comply with Texas Government Code, Section 2252.908 and in connection therewith, the Company agrees to go online with the Texas Ethics Commission to complete a Form 1295 Certificate and further agrees to print the completed certificate and execute the completed certificate in such form as is required by Texas Government Code, Section 2252.908 and the rules of the Texas Ethics Commission and provide to the City, at the time of delivery of an executed counterpart of this Agreement, a duly executed completed Form 1295 Certificate.

23. Execution of Agreement by Parties. If this Agreement is not executed by both the Company and the City on or before February 14, 2019, this Agreement will be null and void and of no force or effect.

24. Time is of the Essence. THE PARTIES SPECIFICALLY AGREE THAT TIME IS OF THE ESSENCE OF EACH AND EVERY PROVISION OF THIS AGREEMENT AND EACH PARTY HEREBY WAIVES ANY RULE OF LAW OR EQUITY WHICH WOULD OTHERWISE GOVERN TIME OF PERFORMANCE.

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:**

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

By: \_\_\_\_\_

Name: Sonja Land  
Title: City Secretary

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: Cliff Keheley  
Title: City Manager

Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney or Designee

**COMPANY:**

**SUNDANCE MC, LLC,  
a Texas limited liability company**

By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_

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

**Utility Improvements**

