

RESOLUTION NO. 42-2020

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, APPROVING AN AMENDMENT TO AN ECONOMIC DEVELOPMENT PROGRAM AGREEMENT (CHAPTER 380 AGREEMENT) BETWEEN THE CITY OF MESQUITE, TEXAS, (THE “CITY”), ELEMENTS INTERNATIONAL GROUP, LLC (THE “COMPANY”), AND IDIL SKYLINE D, LLC, (THE “LANDLORD”), DATED EFFECTIVE MAY 1, 2019, RELATING TO ECONOMIC DEVELOPMENT INCENTIVES TO THE COMPANY TO RELOCATE ITS WORLD HEADQUARTERS TO 2250 SKYLINE DRIVE, MESQUITE, TEXAS (THE “ORIGINAL AGREEMENT”) AMENDING THE MINIMUM TAXABLE VALUE OF THE LAND, BUILDING AND BUSINESS PERSONAL PROPERTY TO \$22,000,000.00, COLLECTIVELY, AND AMENDING CERTAIN DATES, PROVISIONS RELATING TO THE LEASE, AND PROVISIONS RELATING TO THE INITIAL TERM, THE EXTENDED TERM AND THE INCENTIVE PERIOD (THE “AMENDMENT”); AUTHORIZING THE CITY MANAGER TO FINALIZE AND EXECUTE THE AMENDMENT FOR SUCH PURPOSES AND TO TAKE ALL ACTIONS NECESSARY OR ADVISABLE TO COMPLETE THE TRANSACTIONS CONTEMPLATED BY THE AMENDMENT.

WHEREAS, Chapter 380 of the Texas Local Government Code authorizes the City of Mesquite, Texas (the “**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, on March 18, 2019, by Resolution No. 28-2019, the City Council of the City (the “**City Council**”) adopted an economic development program pursuant to Chapter 380 of the Texas Local Government Code (the “**Program**”), and to implement the Program, the City Council approved an Economic Development Program Agreement between the City and ELEMENTS INTERNATIONAL GROUP, LLC, a Texas Limited Liability company (the “**Company**”), and IDIL SKYLINE D, LLC, a Delaware limited liability company (the “**Landlord**”) in connection with the Company relocating its world headquarters to the Landlord’s facility located at 2250 Skyline Drive, Mesquite, Texas (the “**Original Agreement**”); and

WHEREAS, all capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Original Agreement; and

WHEREAS, the City has been presented with a proposed amendment to the Original Agreement, a copy of said amendment being attached hereto as Exhibit A and incorporated herein by reference for all purposes (the “**Amendment**”); and

WHEREAS, the Amendment amends the Original Agreement to: (i) provide that the minimum taxable value of the Land, Building and Business Personal Property shall be \$22,000,000.00, collectively; and (ii) amend certain dates, provisions relating to the Lease, and provisions relating to the Initial Term, the Extended Term and the Incentive Period to be consistent with the term of the Lease; and

WHEREAS, the Amendment is in the best interest of the City and its citizens and will assist in implementing the 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 facts and recitations contained in the preamble of this resolution are hereby found and declared to be true and correct and are incorporated and adopted as part of this resolution for all purposes.

SECTION 2. That the City Council finds that the terms and provisions of the Amendment, a copy of which is attached hereto as Exhibit A and incorporated herein by reference, is in the best interest of and will benefit the City and its citizens 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 3. That the City Council hereby approves the Amendment and authorizes the Amendment as part of the Program whereby, subject to the terms and conditions of the Original Agreement, as amended by the Amendment, the City will provide economic development incentives to the Company and take other specified actions as more fully set forth in the Original Agreement, as amended by the Amendment.

SECTION 4. That the City Manager is further hereby authorized to finalize and execute the Amendment and to take all actions necessary or advisable to complete the transactions contemplated by the Amendment.

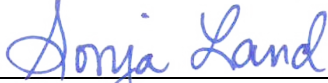
SECTION 5. That the sections, paragraphs, sentences, clauses and phrases of this resolution are severable and, if any phrase, clause, sentence, paragraph or section of this resolution should be declared invalid, illegal or unenforceable by the final judgment or decree of any court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of any of the remaining phrases, clauses, sentences, paragraphs and sections of this resolution and such remaining provisions shall remain in full force and effect and shall be construed and enforced as if the invalid, illegal or unenforceable provision had never been included in this resolution.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 21st day of September 2020.



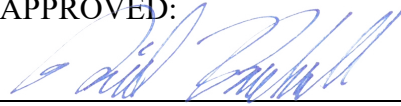
Bruce Archer
Mayor

ATTEST:



Sonja Land
City Secretary

APPROVED:



David L. Paschall
City Attorney

EXHIBIT A

AMENDMENT TO
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT
BETWEEN THE CITY OF MESQUITE,
ELEMENTS INTERNATIONAL GROUP, LLC, AND
IDIL SKYLINE D, LLC

**AMENDMENT TO
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT
BETWEEN THE CITY OF MESQUITE,
ELEMENTS INTERNATIONAL GROUP, LLC and
IDIL SKYLINE D, LLC**

This AMENDMENT TO ECONOMIC DEVELOPMENT PROGRAM AGREEMENT (this "Amendment") is between the City of Mesquite, a Texas home rule municipality (the "City"), ELEMENTS INTERNATIONAL GROUP, LLC, a Texas limited liability company (the "Company") and IDIL SKYLINE D, LLC, a Delaware limited liability company (the "Landlord"). The City, the Company and the Landlord may hereafter sometimes be referred to singularly as a "Party" and collectively as the "Parties."

WHEREAS, the Landlord is the owner of that certain tract of real property located in the City of Mesquite, Texas, consisting of approximately 29.56 acres and being commonly known as 2250 Skyline Drive, Mesquite, Texas and being more particularly described in **Exhibit "A"** attached hereto and made a part hereof for all purposes (the "Land"); and

WHEREAS, the Landlord has constructed an industrial building containing approximately 487,200 square feet of floor space on the Land known as the "Skyline Trade Center, Facility D" (the "Building"); and

WHEREAS, the Land and Building are hereinafter sometimes collectively referred to as the "Mesquite Facility"; and

WHEREAS, the Company is a global leader in furniture manufacturing and distribution; and

WHEREAS, the Parties have entered into that certain Economic Development Program Agreement dated effective May 1, 2019, relating to economic development incentives to incentivize the Company to relocate its world headquarters to the Mesquite Facility (the "Original Agreement"); and

WHEREAS, on March 18, 2019, by Resolution No. 28-2019, the City Council of the City adopted an economic development program pursuant to Chapter 380 of the Local Government Code (the "Program") to promote local economic development and to stimulate business and commercial activity in the City and authorized the Original Agreement as part of the Program; and

WHEREAS, all capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Original Agreement; and

WHEREAS, the Original Agreement provided that the City would collect Ad Valorem Taxes on the Land, Building and Business Personal Property (which by definition specifically excludes non-taxable inventory such as goods in transit, freeport goods and merchandise, supplies, materials or other goods that are non-taxable) based on a minimum taxable value of FOURTEEN MILLION AND NO/100 (\$14,000,000.00) for the Land and Building and a minimum taxable value of EIGHT MILLION AND NO/100 DOLLARS (\$8,000,000.00) for the Business Personal Property; and

WHEREAS, the Parties desire to amend the Original Agreement to provide that the minimum taxable value of the Land, Building and Business Personal Property shall be TWENTY-TWO MILLION AND NO/100 DOLLARS (\$22,000,000.00) collectively; and

WHEREAS, the Parties also desire to amend the Original Agreement to: (i) amend certain dates in the Original Agreement; (ii) amend provisions in the Original Agreement relating to the Lease (as hereinafter defined); and (iii) amend provisions in the Original Agreement relating to the Initial Term, the Extended Term and the Incentive Period to be consistent with the term of the Lease (as hereinafter defined); and

WHEREAS, this Amendment is in the best interest of the City and its citizens; and

WHEREAS, the Parties desire to amend the Original Agreement as more fully set forth herein.

NOW, THEREFORE, in consideration of the covenants and agreements set forth in this Amendment and the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, the Parties agree to amend the Original Agreement as follows:

1. Amendment to Definition of Extended Term. The definition of “Extended Term” in Article II of the Original Agreement shall be deleted in its entirety and replaced with the following:

“Extended Term” shall mean the period commencing June 1, 2027, and continuing thereafter until and including the earlier of: (i) December 31, 2029; or (ii) the date this Agreement is terminated by the City or the Company pursuant to a right to terminate as expressly provided herein provided the Additional Conditions Precedent for Extended Term have been satisfied.”

2. Amendment to Definition of Incentive Period. The definition of “Incentive Period” in Article II of the Original Agreement shall be deleted in its entirety and replaced with the following:

“Incentive Period” shall mean the period commencing with the Effective Date of this Agreement and continuing until the earlier of: (i) May 31, 2026; or (ii) the date this Agreement is terminated by the City or the Company pursuant to a right to terminate more fully set forth herein, provided, however, in the event the Company timely satisfies all of the Additional Conditions Precedent to Extended Term set forth in Article VII – Part B of this Agreement, the Incentive Period shall be extended to include the period commencing with June 1, 2026, and continuing thereafter until the earlier of: (i) December 31, 2028; or (ii) the date this Agreement is terminated by the City or the Company pursuant to a right to terminate more fully set forth herein.

3. Amendment to Definition of Initial Term. The definition of “Initial Term” in Article II of the Original Agreement shall be deleted in its entirety and replaced with the following:

“Initial Term” shall mean the period commencing with the Effective Date and continuing until and including the earlier of: (i) May 31, 2027; or (ii) the date this Agreement is terminated by the City or the Company pursuant to a right to terminate as expressly provided herein.”

4. Amendment to Definition of Lease. The definition of “Lease” in Article II of the Original Agreement shall be deleted in its entirety and replaced with the following:

“Lease” shall mean that certain Lease Agreement executed by the Company and the Landlord relating to the right and obligation of the Company to occupy the Building consisting of a primary term commencing no later than January 15, 2019, and continuing until and including

May 31, 2026, and containing the option for the tenant to extend the term of the lease through at least December 31, 2028.”

5. Amendment to Article IV. Article IV of the Original Agreement shall be deleted in its entirety and replaced with the following:

“The term of this Agreement shall commence on the Effective Date and shall continue until the earlier of: (i) May 31, 2027; or (ii) the date this Agreement is terminated by the City or the Company pursuant to a right to terminate as expressly provided herein provided, however, in the event the Company timely satisfies all of the Additional Conditions Precedent for Extended Term set forth in Article VII – Part B of this Agreement, the term of this Agreement shall be extended to include the additional period from June 1, 2027, and continuing thereafter until the earlier of: (i) December 31, 2029; or (ii) the date this Agreement is terminated by the City or the Company pursuant to a right to terminate more fully set forth herein (the “Term”).

6. Amendment to Article VI, Sections 1, 2, 3, 4, 5 and 6. Article VI, Sections 1, 2, 3, 4, 5 and 6 of the Original Agreement shall be deleted in their entirety and replaced with the following:

“1. Lease of Mesquite Facility. The Company shall lease one hundred percent (100%) of the Building for a primary term commencing no later than January 15, 2019, and terminating no earlier than May 31, 2026, and containing the option for the tenant to extend the term of the lease through at least December 31, 2028 (the “Lease Requirement”);”

“2. Copy of Lease. The Company shall deliver to the City a copy of the written lease satisfying the Lease Requirement executed by both the Company and the Landlord on or before March 2, 2020;”

“3. Certificate of Occupancy. The Company shall obtain a Certificate of Occupancy for the Building on or before April 20, 2020, and shall commence operations of the Company’s Business at the Mesquite Facility on or before April 20, 2020;”

“4. Required Jobs. The Company shall employ at least fifty (50) Employees who conduct their job duties at the Mesquite Facility on or before April 20, 2020, and will maintain at least fifty (50) Employees at all times thereafter during the Term of this Agreement;”

“5. Combined Taxable Valuation of Land, Building and Business Personal Property. The combined taxable valuation of the Land, Building and Business Personal Property (which by definition specifically excludes non-taxable inventory such as goods in transit, freeport goods and merchandise, supplies, materials or other goods that are non-taxable) at the Mesquite Facility shall be at least TWENTY TWO MILLION AND NO/100 DOLLARS (\$22,000,000.00) as of January 1st of each Incentive Tax Year during the Term of this Agreement;”

“6. Intentionally Deleted.”

7. Amendment to Article VII – Part A, Sections 4, 5, 6, 7, 8 and 9. Article VII – Part A, Sections 4, 5, 6, 7, 8 and 9 of the Original Agreement shall be deleted in their entirety and replaced with the following:

“4. Certificate of Occupancy. The Company shall have obtained a Certificate of Occupancy for the Building on or before April 20, 2020, and shall have commenced operations of the Company’s Business at the Mesquite Facility on or before April 20, 2020;”

“5. Required Jobs. The Company shall have employed at least fifty (50) Employees who conduct their job duties at the Mesquite Facility on or before April 20, 2020, and shall have maintained at least fifty (50) Employees at all times thereafter up to and including the date of the Payment Request;”

“6. Combined Taxable Valuation of Land, Building and Business Personal Property. For each Incentive Tax Year during the Term of this Agreement, the time for any protest, challenge or appeal of the taxable valuation of the Land, Building and Business Personal Property for the Incentive Tax Year for which the Payment Request is being requested has passed; or (1) if a protest, challenge or appeal of the appraised valuation of the Land and Building *and* the Business Personal Property for such Incentive Tax Year have been filed, final, non-appealable administrative orders or judicial decisions shall have been entered determining the fair market value of the Land, Building and Business Personal Property (which by definition specifically excludes non-taxable inventory such as goods in transit, freeport goods and merchandise, supplies, materials or other goods that are non-taxable) for such Incentive Tax Year to be an amount equal to or greater than TWENTY TWO MILLION AND NO/100 DOLLARS (\$22,000,000.00); or (2) if a protest, challenge or appeal of the appraised valuation of the Land and Building *but not* the Business Personal Property for such Incentive Tax Year has been filed, the fair market value of the Land and Building as determined by a final, non-appealable administrative order or judicial decision, together with the taxable valuation of the Business Personal Property (which by definition specifically excludes non-taxable inventory such as goods in transit, freeport goods and merchandise, supplies, materials or other goods that are non-taxable) as determined by DCAD for such Incentive Tax Year, shall be an amount equal to or greater than TWENTY TWO MILLION AND NO/100 DOLLARS (\$22,000,000.00); or (3) if a protest, challenge or appeal of the appraised valuation of the Business Personal Property *but not* the Land and Building for such Incentive Tax Year has been filed, the fair market value of the Business Personal Property (which by definition specifically excludes non-taxable inventory such as goods in transit, freeport goods and merchandise, supplies, materials or other goods that are non-taxable) as determined by a final, non-appealable administrative order or judicial decision, together with the taxable valuation of the Land and Building as determined by DCAD for such Incentive Tax Year, shall be an amount equal to or greater than TWENTY TWO MILLION AND NO/100 DOLLARS (\$22,000,000.00);”

“7. Payment of Ad Valorem Taxes. (i) The Company shall have timely paid all Ad Valorem Taxes assessed against the Business Personal Property at the Mesquite Facility for the Incentive Tax Year for which the Payment Request is being requested; (ii) (a) the Landlord shall have timely paid all Ad Valorem Taxes assessed against the Land and Building for the Incentive Tax Year for which the Payment Request is being requested, (b) the Company shall have reimbursed the Landlord for the Ad Valorem Taxes paid by the Landlord pursuant to Article VII – Part A, Section 7(ii)(a) for the Incentive Tax Year for which the Payment Request is being requested; and (c) the Company shall have provided evidence reasonably satisfactory to the City that the Company has reimbursed the Landlord for the Ad Valorem Taxes paid by

the Company pursuant to Article VII – Part A, Section 7(ii)(a) for the Incentive Tax Year for which the Payment Request is being requested; and (iii) the amount of Ad Valorem Taxes paid to the City pursuant to Article VII – Part A, Sections 7(i) and 7(ii)(a) above shall equal or exceed the amount determined by multiplying the City tax rate in effect for the Incentive Tax Year for which the Payment Request is being requested by TWENTY TWO MILLION AND NO/100 DOLLARS (\$22,000,000.00);”

“8. Intentionally Deleted.”

“9. Intentionally Deleted.”

8. Amendment to Article VII – Part B, Sections 1, 2 and 3. Article VII – Part B, Sections 1, 2 and 3 of the Original Agreement shall be deleted in their entirety and replaced with the following:

“1. Extension of Lease Term. On or before June 1, 2026, the Company shall have extended the term of the Lease in writing through at least December 31, 2028 (the "Lease Extension");”

“2. Copy of Lease Extension. The Company shall have provided a copy of the Lease Extension to the City on or before June 1, 2026; and”

“3. Confirmation of Lease Extension by Landlord. The Company shall have provided to the City on or before June 1, 2026, a written confirmation signed by the then owner of the Mesquite Facility acknowledging that the Lease has been extended through at least December 31, 2028 (such confirmation may take the form of a copy of a written amendment to the Lease executed by the Landlord and the Company that acknowledges the occurrence of the extension).”

9. Amendment to Article VIII, Sections 2, 4, 5 and 6. Article VIII, Sections 2, 4, 5 and 6 of the Original Agreement shall be deleted in their entirety and replaced with the following:

“2. Grant of Economic Development Incentives for Extended Term. Provided the Conditions Precedent set forth in Article VII – Part A, the Additional Conditions Precedent for Extended Term set forth in Article VII - Part B, and the Economic Covenants set forth in Article VI of this Agreement have been satisfied and are then continuing, the City hereby approves an economic development grant to the Company for the Incentive Tax Year commencing January 1, 2027, and the Incentive Tax Year commencing January 1, 2028, from the revenue in the City’s general funds calculated by subtracting the Base Year Taxes from the total amount of taxes paid by the Landlord and the Company to the City for Ad Valorem Taxes assessed and collected by the City against the Land, Building and Business Personal Property for the Incentive Tax Year commencing January 1, 2027, and the Incentive Tax Year commencing January 1, 2028, and multiplying that amount by the following percentage below:

Incentive Tax Year	Percentage
2027 and 2028	60%”

“4. Agreement Regarding Protest, Challenge or Appeal of Property Valuations. The Company represents to the City that, under the terms of the Lease, the Company is required to reimburse the Landlord for Ad Valorem Taxes assessed against the Land and Building

paid by the Landlord to the City during the Term of this Agreement. The Company acknowledges that a material consideration for the City's agreement to enter into this Agreement and to pay the Economic Development Incentives set forth herein is the City's expectation that the taxable valuation of the Land, Building and Business Personal Property (which by definition specifically excludes non-taxable inventory such as goods in transit, freeport goods and merchandise, supplies, materials or other goods that are non-taxable) for each Incentive Tax Year during the Term of this Agreement will be at least TWENTY TWO MILLION AND NO/100 DOLLARS (\$22,000,000.00) resulting in substantially increased ad valorem tax revenue for the City. The Company or the Landlord may protest, challenge or appeal the taxable value of the Land, Building and Business Personal Property as appraised by DCAD for any Incentive Tax Year during the Term of this Agreement provided, however, in consideration of the City's agreement to enter into this Agreement and grant the Economic Development Incentives under the terms and conditions set forth herein, the Parties agree that if such protest, challenge or appeal results in a reduction in the valuation of the Land, Building and Business Personal Property (which by definition specifically excludes non-taxable inventory such as goods in transit, freeport goods and merchandise, supplies, materials or other goods that are non-taxable) for such Incentive Tax Year to an amount less than TWENTY TWO MILLION AND NO/100 DOLLARS (\$22,000,000.00), no Incentive Payment will be due or payable by the City to the Company for that Incentive Tax Year."

"5. Payment of Economic Development Incentives for the Initial Term. Provided all Conditions Precedent set forth in Article VII – Part A and the Economic Covenants set forth in Article VI have been satisfied and are then continuing, the economic development grants set forth in Article VIII, Section 1 above shall be payable by the City to the Company in annual payments (referred to herein as "Incentive Payments") on the later of: (i) June 1st of the calendar year following the Incentive Tax Year for which the Incentive Payment is payable; or (ii) sixty (60) days after all Conditions Precedent to the payment of such Incentive Payment including, without limitation, the Conditions Precedent set forth in Article VII – Part A, Sections 6 and 7 have been satisfied. Any Incentive Payment delayed as a result of the filing of a tax protest, challenge or appeal shall no longer be due and payable in the event that the combined fair market value of the Land, Building and Business Personal Property (which by definition specifically excludes non-taxable inventory such as goods in transit, freeport goods and merchandise, supplies, materials or other goods that are non-taxable) for such Incentive Tax Year is reduced to an amount less than TWENTY TWO MILLION AND NO/100 DOLLARS (\$22,000,000.00)."

"6. Payment of Economic Development Incentives for the Extended Term. Provided all Conditions Precedent set forth in Article VII – Part A, the Additional Conditions Precedent for Extended Term set forth in Article VII – Part B and the Economic Covenants set forth in Article VI have been satisfied and are then continuing, the economic development grants set forth in Article VIII, Section 2 above shall be payable by the City to the Company in annual Incentive Payments on the later of: (i) June 1st of the calendar year following the Incentive Tax Year for which the Incentive Payment is payable; or (ii) sixty (60) days after all Additional Conditions Precedent for Extended Term set forth in Article VII – Part B have been satisfied and all Conditions Precedent set forth in Article VII – Part A have been satisfied including, without limitation, the Conditions Precedent set forth in Article VII – Part A, Sections 6 and 7. Any Incentive Payment delayed as a result of the filing of a tax protest, challenge or appeal shall no longer be due and payable in the event that the combined fair market value of the Land, Building and Business Personal Property (which by definition specifically excludes non-taxable inventory such as goods in

transit, freeport goods and merchandise, supplies, materials or other goods that are non-taxable) for such Incentive Tax Year is reduced to an amount less than TWENTY TWO MILLION AND NO/100 DOLLARS (\$22,000,000.00).”

10. Recitals. The recitals contained in this Amendment are true and correct and reflect the intent of the Parties regarding the subject matter of this Amendment. In the event it becomes necessary to interpret any provision of this Amendment, the intent of the Parties, as evidenced by the recitals, shall be taken into consideration and, to the maximum extent possible, given full effect. The Parties have relied upon the recitals as part of the consideration for entering into this Amendment and the recitals are hereby incorporated into this Amendment and shall be considered part of the covenants, consideration and promises that bind the Parties.

11. Effect of Amendment. This Amendment amends the Original Agreement in no other manner except as expressly set forth herein. In the event there is any conflict between this Amendment and the Original Agreement, the terms and provisions of this Amendment shall control.

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

13. Severability. The sections, paragraphs, sentences, clauses, and phrases of this Amendment are severable and, if any phrase, clause, sentence, paragraph, or section of this Amendment 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 Amendment 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 Amendment.

14. Counterparts. This Amendment 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 Amendment 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 relating to the subject matter of this Amendment are entirely superseded hereby and extinguished by the execution of this Amendment.

16. Authority. Each Party represents that it has the full power and authority to enter into and fulfill its obligations under this Amendment and that the Person signing this Amendment on behalf of such Party has the authority to sign this Amendment and bind such Party.

17. Form 1295 Certificate. The Company and the Landlord agree to comply with Texas Government Code, Section 2252.908 and in connection therewith, the Company and the Landlord agree to go online with the Texas Ethics Commission to complete a Form 1295 Certificate and further agree 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 Amendment, a duly executed completed Form 1295 Certificate.

18. Effective Date. The Effective Date of this Amendment shall be the last date on which the authorized representatives of all Parties have signed this Amendment.

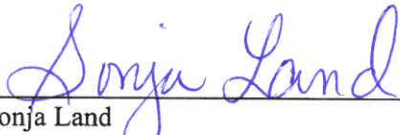
19. Law Governing. This Amendment shall be governed by, construed and enforced in accordance with the laws of the State of Texas (without giving effect to any conflict of law principles that would result in the application of the laws of any state other than Texas). The Parties agree that venue of any suit to construe or enforce this Agreement shall lie exclusively in state courts in Dallas County, Texas.

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

21. Effect of Amendment on Lease. The Parties agree that this Amendment does not amend the Lease.

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

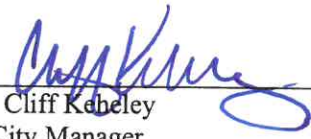
ATTEST:

By: 
Sonja Land
City Secretary

Date: 9.22.2020

CITY:

CITY OF MESQUITE,
a Texas home rule municipality

By: 
Name: Cliff Kebeley
Title: City Manager

Date: 9-22-2020

APPROVED AS TO FORM:


City Attorney or his Designee

[Signatures Continue on Next Page]

COMPANY:

**ELEMENTS INTERNATIONAL GROUP,
LLC**

By: 

Name: RICHARD S. FRANKL

Title: CFO

Date: 8/6/2020

[Signatures Continue on Next Page]

LANDLORD:

IDIL SKYLINE D, LLC,
a Delaware limited liability company

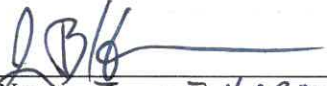
By: 
Name: Jon B. Harmon
Title: VP ASSET MANAGEMENT
Date: 7/24/20

EXHIBIT "A"
TO AMENDMENT TO
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

Legal Description of Land

STATE OF TEXAS:
COUNTY OF DALLAS:

BEING a tract of land situated in the Daniel Tanner League, Abstract No. 1462, City of Mesquite, Dallas County, Texas, being a portion of those tracts of land as described in deeds to Industrial Developments International (Texas), L.P., recorded in Volume 2005019, Page 1477 and Volume 2005031, Page 5063, and all of that tract of land as described in deed to Industrial Developments International (Texas), L.P., recorded in Volume 2005055, Page 9353, Deed Records, Dallas County, Texas (DRDCT), and being more particularly described as follows:

BEGINNING at a cut X in concrete found in the westerly right-of-way line of N. Peachtree Road (100' R.O.W. - Volume 71054, Page 405, DRDCT) at the southeast corner of Lot 2, Block A, Skyline Trade Center, an addition to the City of Mesquite, Dallas County, Texas as recorded in 20080082732, DRDCT;

THENCE along the westerly right-of-way line of said N. Peachtree Road, as follows:

Southeasterly, along a curve to the left, having a radius point that bears N 58°16'03" E, 1369.75 feet, a central angle of 04°25'34", an arc distance of 105.82 feet, and a chord that bears S 33°56'44" E, 105.79 feet to a 1/2" rebar found at the end of said curve;

S 36°09'31" E, tangent to said curve, a distance of 248.77 feet to a 1/2" rebar capped Goodwin & Marshall found at the beginning of a curve to the right, from which a 1/2" rebar found bears S 36°09'31" E, 1.00 feet;

Southeasterly, along said curve, having a radius of 659.73 feet, a central angle of 52°30'00", an arc distance of 604.51 feet, and a chord that bears S 09°54'31" E, 583.58 feet to a 1/2" rebar capped Goodwin & Marshall found at the end of said curve;

S 16°20'30" W, tangent to said curve, a distance of 334.98 feet to a 1/2" rebar found at the intersection of the westerly right-of-way line of said N. Peachtree Road and the northerly right-of-way line of the Texas and Pacific Railroad right-of-way (called 200' R.O.W.), said point being the southeast corner of said Industrial Developments International (Texas), L.P. tract recorded in Volume 2005055, Page 9353, DRDCT;

THENCE departing the westerly right-of-way line of said N. Peachtree Road, along the northerly right-of-way line of said Texas and Pacific Railroad right-of-way, as follows:

N 73°39'11" W, a distance of 972.43 feet to a 1/2" rebar capped Goodwin & Marshall found at the beginning of a tangent curve to the left, having a radius of 5829.65 feet;

Northwesterly, along said curve, having a central angle of 05°05'40", an arc distance of 518.35 feet, and a chord that bears N 76°12'01" W, 518.18 feet to a 1/2" rebar capped Goodwin & Marshall found at the southeast corner of Lot 3, Block A, Skyline Trade Center, an addition to the City of Mesquite, Dallas County, Texas as recorded in 20070058327, DRDCT;

THENCE N 13°00'22" E, departing the northerly right-of-way line of said Texas and Pacific Railroad right-of-way, non-tangent to said curve, along the east line of said Lot 3, Block A, a distance of 827.14 feet to a cut X in concrete found at the northeast corner of said Lot 3, Block A, said point lying in the south line of said Lot 2, Block A;

THENCE along the south line of said Lot 2, Block A, as follows:

S 76°59'38" E, a distance of 706.42 feet to a cut X in concrete found at the beginning of a tangent curve to the left, having a radius of 300.00 feet;

Northeasterly, along said curve, having a central angle of 60°25'50", an arc distance of 316.41 feet, and a chord that bears N 72°47'27" E, 301.95 feet to a cut X in concrete found at the point of reverse curve of a curve to the right, having a radius of 300.00 feet;

Northeasterly, along said curve, having a central angle of 14°25'05", an arc distance of 75.49 feet, and a chord that bears N 49°40'09" E, 75.29 feet to a cut X in concrete found at the end of said curve;

N 56°52'39" E, tangent to said curve, a distance of 4.83 feet to the POINT OF BEGINNING and containing 1,287,414 square feet or 29.555 acres of land.

End of Exhibit
