

RESOLUTION NO. 06-2021

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 SALE BY THE CITY OF AN APPROXIMATELY 1.8093 ACRE TRACT OF LAND COMMONLY KNOWN AS 1025 MILITARY PARKWAY, MESQUITE, TEXAS 75149 (THE "LAND") TO KODIAK CAPITAL PARTNERS, LLC ("KODIAK"); AUTHORIZING THE CITY MANAGER TO FINALIZE AND EXECUTE AN AGREEMENT BETWEEN THE CITY AND KODIAK FOR THE SALE OF THE LAND (THE "SALES AGREEMENT") AND ALL DOCUMENTS NECESSARY OR ADVISABLE TO COMPLETE THE SALE OF THE LAND; AUTHORIZING THE CITY MANAGER TO FINALIZE AND EXECUTE AN ECONOMIC DEVELOPMENT PROGRAM AGREEMENT ("CHAPTER 380 AGREEMENT") WITH SECURITY BRANDS, INC., SNAP LOCK TECH, LLC, AND KODIAK IN CONNECTION WITH THE PURCHASE OF THE LAND AND THE DEVELOPMENT OF A COMMERCIAL BUILDING CONSISTING OF AT LEAST 16,000 SQUARE FEET ON THE LAND; AND AUTHORIZING THE CITY MANAGER TO ADMINISTER THE CHAPTER 380 AGREEMENT AND SALES AGREEMENT ON BEHALF OF THE CITY.

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, the City owns a certain tract of real property consisting of approximately 1.8093 acres and being commonly known as 1025 Military Parkway, Mesquite, Texas 75149 (the "Land"); and

WHEREAS, the City created the Towne Centre Reinvestment Zone Number Two, City of Mesquite, Texas by Ordinance No. 3257 approved by the City Council of the City ("City Council") on September 21, 1998, to promote development or redevelopment in such reinvestment zone, in accordance with the Tax Increment Financing Act, V.T.C.A, Tax Code, Chapter 311; and

WHEREAS, the original boundaries of the Towne Centre Reinvestment Zone Number Two, City of Mesquite, Texas, have been enlarged and the geographic area of the original zone has been increased by Ordinance No. 4529, approved by the City Council on December 18, 2017; and

WHEREAS, the Towne Centre Reinvestment Zone Number Two, City of Mesquite, Texas, as created by Ordinance No. 3257, as now and hereafter amended including, without limitation, as

amended by Ordinance No. 4529 increasing the geographic area of the zone and enlarging the boundaries of the zone, is hereinafter collectively referred to as the “Zone”; and

WHEREAS, the Land is located within the Zone and is in substantial need of development and revitalization; and

WHEREAS, Kodiak Capital Partners, LLC (“Kodiak”) desires to purchase the Land and construct a commercial building on the Land consisting of at least 16,000 square feet (the land and building collectively referred to as the “Mesquite Facility”); and

WHEREAS, Security Brands, Inc. (“Security Brands”) manufactures and sells perimeter access control security devices and will lease the Mesquite Facility and operate its business at the Mesquite Facility; and

WHEREAS, Snap Lock Tech, LLC (“Snap Lock”), a software and website development company, will transfer its business address to the Mesquite Facility and will report and pay sales taxes to the City; and

WHEREAS, the City desires to have the Land developed under the project plan adopted by the City Council for the Zone and accordingly, the sale of the Land by the City to Kodiak will be pursuant to V.T.C.A., Local Government Code §272.001(b)(6); and

WHEREAS, the development of the Land is expected to (i) create new employment opportunities in the City; (ii) increase ad valorem real and personal property taxes assessed and collected by the City; (iii) increase sales tax collected by the City; and (iv) promote development and stimulate business and commercial activity in the City; and

WHEREAS, the City Council has been presented with: (i) a proposed Chapter 380 Agreement between Security Brands, Snap Lock, Kodiak and the City providing economic development incentives to Kodiak for the purchase and development of the Land, a true and correct copy of which is attached hereto as Exhibit A and incorporated herein by reference (the “Chapter 380 Agreement”); and (ii) the related Agreement for the Sale of Real Property between the City and Kodiak for the sale and purchase of the Land, a true and correct copy of which is attached as Exhibit D to the Chapter 380 Agreement (the “Sales Agreement”); and

WHEREAS, the sale of the Land to Kodiak and the economic development incentives set forth in the Chapter 380 Agreement are for the public purpose of creating new employment opportunities in the City, increasing the City’s ad valorem tax base, increasing sales taxes collected on behalf of the City, promoting development, and stimulating business and commercial activity in the City, and

WHEREAS, the sale of the Land to Kodiak and the economic development incentives set forth in the Chapter 380 Agreement will benefit the City and its citizens; and

WHEREAS, after holding a public hearing and upon full review and consideration of the Chapter 380 Agreement and all matters attendant and related thereto, the City Council is of the opinion that the Chapter 380 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 statements, facts, findings, and recitals set forth above are hereby found and declared to be true correct and are incorporated into this resolution and adopted as part of this resolution for all purposes.

SECTION 2. That the City Council finds that the terms of the proposed Chapter 380 Agreement by and between the City, Security Brands, Snap Lock and Kodiak, a copy of which is attached hereto as Exhibit A and incorporated herein by reference, and the related Sales Agreement attached as Exhibit D to the Chapter 380 Agreement, 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 3. That the City Council hereby adopts an economic development program whereby, subject to the terms and conditions of the Chapter 380 Agreement, the City will provide economic development incentives to Kodiak and take other specified actions as more fully set forth in the Chapter 380 Agreement in accordance with the terms and subject to the conditions outlined in the Chapter 380 Agreement.

SECTION 4. That the terms and conditions of the Chapter 380 Agreement and the Sales 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 5. That the City Manager is hereby authorized to finalize and execute the Chapter 380 Agreement and all other documents necessary to consummate the transactions contemplated by the Chapter 380 Agreement.

SECTION 6. That the City Council hereby approves the sale of the Land to Kodiak for such price and upon such terms and conditions as more fully set forth in the Sales Agreement and hereby authorizes the City Manager to finalize and execute the Sales Agreement and all documents necessary or advisable to complete the sale of the Land including, without limitation, a special warranty deed conveying the Land to Kodiak.

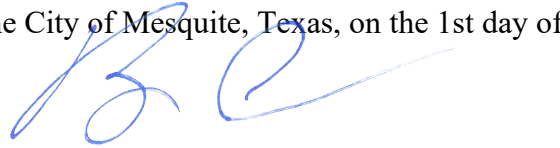
SECTION 7. That the City Manager is further hereby authorized to administer the Chapter 380 Agreement on behalf of the City including, without limitation, the City Manager shall have the authority to: (i) provide any notices required or permitted by the Chapter 380 Agreement; (ii) approve amendments to the Chapter 380 Agreement provided such amendments, together with all previous amendments approved by the City Manager, do not increase City expenditures under the Chapter 380 Agreement in excess of \$50,000; (iii) approve or deny any matter in the Chapter 380 Agreement that requires the consent of the City provided, however, notwithstanding the foregoing, any assignment of the Chapter 380 Agreement that requires the consent of the City pursuant to the terms of the Chapter 380 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 Chapter 380 Agreement; (v) exercise any rights and remedies available to the City under the Chapter 380 Agreement; and (vi) execute any notices, amendments, approvals, consents, denials and waivers authorized by this Section 7 provided, however, notwithstanding anything

contained herein to the contrary, the authority of the City Manager pursuant to this Section 7 shall not include the authority to take any action than cannot be delegated by the City Council or that is within the City Council's legislative functions.

SECTION 8. That the City Manager is further hereby authorized to administer the Sales 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 Sales Agreement; (ii) approve amendments to the Sales Agreement provided such amendments, together with all previous amendments approved by the City Manager, do not increase City expenditures under the Sales Agreement in excess of \$50,000; (iii) approve or deny any matter in the Sales Agreement that requires the consent of the City provided, however, notwithstanding the foregoing, any assignment of the Sales Agreement that requires the consent of the City pursuant to the terms of the Sales 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 Sales Agreement; (v) exercise any rights and remedies available to the City under the Sales Agreement; and (vi) execute any notices, amendments, approvals, consents, denials and waivers authorized by this Section 8 provided, however, notwithstanding anything contained herein to the contrary, the authority of the City Manager pursuant to this Section 8 shall not include the authority to take any action than cannot be delegated by the City Council or that is within the City Council's legislative functions.

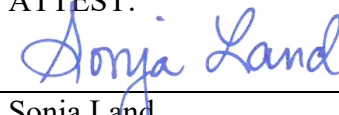
SECTION 9. That the sections, paragraphs, sentences, clauses and phrases of this resolution are severable and, if any phrase, clause, sentence, paragraph or section of this resolution should be declared invalid, illegal or unenforceable by the final judgment or decree of any court of competent jurisdiction, 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 1st day of February 2021.




Bruce Archer
Mayor

ATTEST:



Sonja Land
City Secretary

APPROVED AS TO LEGAL FORM:



David L. Paschall
City Attorney

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"), Security Brands, Inc., a Texas corporation ("Security Brands"), Snap Lock Tech, LLC, a Texas limited liability company ("Snap Lock"), and Kodiak Capital Partners, LLC, a Texas limited liability company ("Kodiak"). Security Brands, Snap Lock, and Kodiak are hereafter collectively referred to as the "Companies." City and the Companies shall be referred to herein individually from time to time as a "Party" and collectively as the "Parties"

WITNESSETH:

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

WHEREAS, the City has a downtown area in substantial need of development and revitalization; and

WHEREAS, the City owns a certain tract of real property located in the City of Mesquite, Texas, consisting of approximately 1.8093 acres and being commonly known as **1025 Military Parkway, Mesquite, Texas 75149** and being more particularly described in **Exhibit "A"** attached hereto and made a part hereof for all purposes (the "Land"); and

WHEREAS, the City created the Towne Centre Reinvestment Zone Number Two, City of Mesquite, Texas by Ordinance No. 3257 approved by the City Council of the Mesquite ("City Council") on September 21, 1998, to promote development or redevelopment in such reinvestment zone, in accordance with the Tax Increment Financing Act, V.T.C.A., Tax Code, Chapter 311 and the geographic area of the original zone has been increased by Ordinance No. 4529, approved by the City Council on December 18, 2017; and

WHEREAS, the Towne Centre Reinvestment Zone Number Two, City of Mesquite, Texas, as created by Ordinance No. 3257, as now and hereafter amended including, is hereinafter collectively referred to as the "Zone"; and

WHEREAS, the Land is located within the Zone; and

WHEREAS, the City obtained an independent appraisal of the Land which determined the fair market value of the Land to be TWO HUNDRED SIXTY-FIVE THOUSAND EIGHT HUNDRED FORTY-SIX AND 00/100 DOLLARS (\$265,846.00) ("Fair Market Value"); and

WHEREAS, Kodiak has agreed to purchase the Land from the City for the Fair Market Value; and

WHEREAS, Kodiak has agreed to construct a commercial building consisting of at least 16,000 square feet on the Land (the "Improvements"); and

WHEREAS, Kodiak will be making at least one million and 00/100 DOLLARS (\$1,000,000.00) of capital improvements to the Land in connection with the construction of the Improvements and inclusive of the purchase price for the Land purchased by Kodiak; and

WHEREAS, the Improvements will substantially increase the taxable value by adding improvements on the Land thereby adding value to the City's tax rolls and increasing the ad valorem real property taxes to be collected by the City; and

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

WHEREAS, Security Brands desires to relocate operations to Mesquite and to occupy the Improvements for the purpose of manufacturing, storage and/or distribution of goods; and

WHEREAS, Snap Lock has agreed to transfer all Snap Lock's operations to the Mesquite Facility address for sales tax purposes; and

WHEREAS, Security Brands, Inc. will provide employment opportunities in Mesquite by hiring and

continuously employing a minimum of fifteen (15) people at the Mesquite Facility and the business personal property installed at the Mesquite Facility will add value to the City's tax rolls and increase the ad valorem business personal property taxes to be collected by the City; and

WHEREAS, Security Brands has advised the City that they will expand their business facilities and employment base in Mesquite if the City provides the Economic Development Incentive to Kodiak to facilitate the construction of the Improvements which Security Brands desires to lease, under the terms and subject to the conditions more fully set forth in this Agreement; and

WHEREAS, Kodiak has advised the City that they will purchase the Land and build the Improvements in Mesquite if the City provides the Economic Development Incentive to Kodiak under the terms and subject to the conditions more fully set forth in this Agreement; and

WHEREAS, Kodiak, Snap Lock and Security Brands are affiliated companies which will all benefit both directly and indirectly from this Agreement;

WHEREAS, the construction of improvements to the Land, the sale of the land for Fair Market Value, the lease of the Mesquite Facility, and the investment of public resources in Downtown Mesquite are for a public purpose and will promote local economic development in the City, stimulate business and commercial activity in the City and benefit the City and its citizens; and

WHEREAS, the operation and occupancy of the Mesquite Facility by Security Brands will benefit the Zone by promoting local economic development and stimulating business and commercial activity in the Zone and will further a purpose of the Zone, which is to promote development and redevelopment of property within the Zone; 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 Companies desire 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 Companies' 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(s)" shall have the meaning set forth in Article VIII of this Agreement.

“Capital Investment” shall have the meaning set forth in Article VII, Section 3 of this Agreement and shall include only expenditures capitalized as capital assets on the books of the applicable company in accordance with generally accepted accounting principles.

“Capital Investment Certificate” shall have the meaning set forth in Article VII, Section 4 of this Agreement.

“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 Company Default (as hereinafter defined) then exists under the terms of this Agreement and that no event exists which, but for notice, the lapse of time, or both, would constitute a Company Default under the terms of this Agreement.

“Certificate of Occupancy” or “CO” shall mean a final certificates of occupancy issued by the City to the applicable company after the Improvements have been completed in compliance with the City’s building, health, safety, fire and other codes and authorizing the applicable company to occupy and operate a business from a cumulative total of from at least 16,000 square feet of the Improvements.

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

“City Default” shall have the meaning set forth in Article IX, Section 3 of this Agreement.

“City Fees” shall mean Water, Wastewater and Roadway impact fees, City of Mesquite required building permit fees, and City of Mesquite required plan review fees.

“Companies” shall mean Security Brands, Inc., Kodiak Capital Partners, LLC, and Snap Lock Tech, LLC, their successors and assigns only as permitted by Article X, Section 1 of this Agreement.

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

“Company Representative” shall mean any duly authorized officer of the applicable company acting on behalf of the company.

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

“Commencement of Vertical Construction” with respect to the Improvements shall mean: (i) the plans for the Improvements have been prepared and approved by all applicable governmental authorities; (ii) Kodiak has obtained all City approvals and the permits required in connection with the construction of the Improvements including all Improvement Entitlements (as herein defined); (iii) the foundation of such Improvements has been poured; and (iv) framing of the Improvements has commenced.

“Economic Development Incentive” shall mean an incentive described in Article VIII of this Agreement.

“Effective Date” shall mean the date the Parties execute this Agreement if the Parties all execute this Agreement on the same date. If the Parties execute this Agreement on different dates, any reference to the “Effective Date” shall mean the date this Agreement is executed by the last Party.

“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.

“Event of Force Majeure” as used in this Agreement shall mean a major unforeseeable act or event that: (a) prevents a Party from performing its obligations under this Agreement; (b) is beyond the reasonable control of the Party; (c) is not caused by any act or omission on the part of the Party; and (d) could not have been prevented or avoided by the exercise by the Party of such diligence and reasonable care as would be exercised by a prudent person under similar circumstances. An Event of Force Majeure must satisfy each of the above requirements and includes but is not limited to lightning, floods, ice storms, hurricanes, tornadoes, earthquakes, natural disasters, acts of God,

explosions, fires, war, terrorism, and civil disturbance. Notwithstanding the foregoing, a Force Majeure Event does not include any financial or economic hardship, changes in market or economic conditions, pandemics, epidemics, public health crisis, or insufficiency of funds. This Event of Force Majeure clause does not excuse the performance of Snap Lock, Security Brands, or Kodiak if any one or more of the Companies could have prevented or avoided the event or impact on this Agreement, or if any one or more of the Companies contributed to or caused the event by any act or omission.

“Exterior Finish Plan” shall mean the exterior finish description for the Improvements attached hereto as **Exhibit “C”** and made a part hereof for all purposes. Any changes to the Exterior Finish Plan require the written consent of both parties.

“Fair Market Value” shall have the meaning set forth in the Recitals to this Agreement.

“Full-time Employee” shall have the meaning set forth by federal, state, and local laws and regulations.

“Improvement Entitlements” shall have the meaning set forth in Article VI, Section 1.

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

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

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

“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).

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

“Party” shall mean either Kodiak, Security Brands, Snap Lock, or the City.

“Parties” shall mean Kodiak, Security Brands, Snap Lock, and the City.

“Payment Request” shall mean the written request executed by Kodiak requesting the payment of the 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.

“Recitals” shall have the meaning set forth in Article I of this Agreement.

“Security Brands” shall mean Security Brands, Inc., a Texas corporation, its successors and assigns only as permitted by Article X, Section 1 of this Agreement.

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

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

“Undocumented Workers” shall mean: (i) individuals who, at the time of employment with the Companies, are not 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 worker” pursuant to V.T.C.A., Government Code §2264.001(4), as hereafter amended or replaced.

“Water, Wastewater, and Roadway Impact Fees” shall mean water, wastewater and roadway impact fees imposed by the City pursuant to City Ordinance No. 4366, as amended or replaced, to generate revenue to fund or recoup all or part of the costs of capital improvements or facility expansion necessitated by and attributable to the Improvements provided, however, in no event shall Water, Wastewater and Roadway Impact Fees include the dedication of rights-of-way or easements for such facilities, or the construction of such improvements imposed pursuant to the City’s zoning or regulations.

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 Companies’ performance of its obligations herein will: (i) increase the amount of real and business personal property ad valorem taxes assessed and collected by the City; (ii) result in employment opportunities being created in the City; (iii) be a catalyst to revitalize and redevelop Downtown Mesquite within the Zone (iv) promote local economic development in the City, stimulate business and commercial activity in the City; and (v) 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) November 1, 2025; or (ii) the date this Agreement is terminated by any Party pursuant to a right to terminate as expressly provided herein (the “Term”).

ARTICLE V

Companies’ Covenant Not to Employ Undocumented Workers

1. Covenant Not to Employ Undocumented Workers. The Companies hereby certify that the Companies and each branch, division, and department of each of the Companies does not employ any Undocumented Workers and the Companies hereby covenant and agrees that the Companies and each branch, division and department of the Companies will not knowingly employ any Undocumented Workers during the Term of this Agreement.

2. Covenant to Notify City of Conviction for Undocumented Workers. The Companies further hereby covenant and agree to provide the City with written notice of any conviction of any of the Companies, or any branch, division or department of any of the Companies, of a violation under 8 U.S.C. §1324a (f) during the Term of this Agreement, 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, any of the Companies, or a branch, division or department of any of the Companies, is convicted of a violation under 8 U.S.C. §1324a (f), Kodiak shall pay to the City, not later than the 120th day after the date the City notifies the Kodiak of the violation, an amount equal to the total Economic Development Incentive previously paid by the City to the Kodiak 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 the Economic Development Incentive being recaptured from the date the Economic Development Incentive was paid by the City to Kodiak until the date repaid by the Kodiak 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 Kodiak if any of the Companies, or any branch, division or department of any of the Companies is convicted of a violation under 8 U.S.C. §1324a (f) during the Term of this Agreement.

5. Remedies. The City shall have the right to exercise all remedies available by law to collect any sums due by any of the Companies 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 Companies are not liable for a violation of Article V of this Agreement by a subsidiary, affiliate, or franchisee of the applicable company, or by a person with whom the applicable company contracts.

7. Survival. The terms, provisions, covenants, agreements and obligations of the Companies 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

Kodiak's Additional Covenants

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

1. Purchase of Land. Kodiak shall purchase the Land from the City for Fair Market Value within 30 days after last date of (i) the date Kodiak has obtained all approvals and permits from all governmental authorities with jurisdiction of the property of its site plans, building plans and concepts which are necessary for construction of the Improvements, and (ii) the date the City has received and delivered to Kodiak final rezoning approvals as required by Article VIII, Section 6 of this Agreement (collectively, the "Improvement Entitlements"). Upon Kodiak's receipt of all of all Improvement Entitlements Kodiak and City shall acknowledge in a written agreement the date of Kodiak's receipt of such material for the purpose of determining the closing date of the purchase of the Land by Kodiak.

2. Timely Payment of Development Fees. Kodiak shall timely pay to the City all impact fees, permit fees, development fees, review fees and inspection fees in connection with the Mesquite Facility (hereinafter defined) including, without limitation, all Water, Wastewater and Roadway Impact Fees.

3. Records and Reports. During the Term of this Agreement, Kodiak shall deliver to the City within thirty (30) days after written request such documentation as the City may reasonably request to confirm compliance by the Kodiak with the representations, covenants and agreements set forth in this Article VI;

4. Inspection. Kodiak shall provide the City, its agents and employees with access to the Mesquite Facility at such times as the City may reasonably request during the Term of this Agreement, but no more often than two (2) times per calendar year, to conduct such inspections as the City deems reasonably necessary in order to confirm compliance by Kodiak with the representations, covenants and agreements of Kodiak as set forth in this Agreement provided the City has given Kodiak at least seventy-two (72) hours prior written notice of such inspection. Such inspections shall be made during usual business hours and at such times so as to not interfere with the operations of Security Brands;

5. Representative of Company to Accompany Inspections. Kodiak shall provide a representative of Kodiak to accompany the City during all inspections of the Mesquite Facility conducted by the City pursuant to Article VI, Section 4 above;

6. Timely Payment of Taxes. Kodiak shall timely pay all ad valorem taxes assessed against the Mesquite Facility during the Term of this Agreement prior to the date such taxes become delinquent;

7. Intentionally deleted.

8. Maintenance Obligations. Kodiak shall comply with all building codes, zoning ordinances and all other codes, ordinances and regulations of the City at all times during the Term of this Agreement and shall, at the Kodiak's sole cost and expense, maintain the Mesquite Facility in good repair at all times during the Term of this Agreement;

9. Compliance with Laws. Kodiak shall comply with all federal, state and local laws, ordinances and regulations relating to the ownership and operation of the Mesquite Facility during the Term of this Agreement;

10. Performance of Agreement. Kodiak shall timely keep and perform all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by the Companies under the terms of this Agreement;

11. Performance of Other Agreements. Kodiak shall timely keep and perform all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by the Companies under the terms of all other agreements now or hereafter existing between the Companies and the City during the Term of this Agreement; and

12. No Goods or Services. Kodiak agrees the performance of any or all obligations of the Companies under the terms of this Agreement does not constitute the provision of goods or services to the City.

Snap Lock's Additional Covenants

In consideration of the City's agreement to grant the Economic Development Incentive to Kodiak (an affiliated company) to facilitate the building of the new Mesquite Facility Snap Lock desires to transfer all sales tax operations upon the terms and conditions more fully set forth herein, Snap Lock represents, covenants and agrees as follows, to-wit:

1. Records and Reports. During the Term of this Agreement, Snap Lock shall deliver to the City within thirty (30) days after written request, such documentation as the City may reasonably request to confirm compliance by Snap Lock with the representations, covenants and agreements set forth in this Article VI;

2. Transfer of Sales Taxes. Upon execution of this Agreement, Snap Lock shall promptly transfer all sales tax operations for Snap Lock to the Mesquite Facility address in Mesquite, Texas and shall provide proof of such by submitting a sales tax certificate or other appropriate documentation to the City no later than 60 days after the Effective Date of this Agreement. Provided Kodiak has not elected to effect a Property Sale (as defined herein) or Snap Lock has not elected to effect a Business Sale (as defined herein) in accordance with Article X, Section 7, Snap Lock (i) shall continuously maintain all sales tax operations for Snap Lock at the Mesquite Facility address for a period of no less than five (5) years, (ii) shall not significantly reduce sales tax operations or cease sales tax operations from the Mesquite Facility for a period of no less than (5) years, and (iii) for the Term of this Agreement, Snap Lock shall not amend any sales tax filings related to the Mesquite Facility unless Snap Lock has obtained the prior written consent of the City;

3. Performance of Agreement. Snap Lock shall timely keep and perform all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by Snap Lock under the terms of this Agreement;

4. Performance of Other Agreements. Snap Lock shall timely keep and perform all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by Snap Lock under the terms of all other agreements now or hereafter existing between the Snap Lock and the City during the Term of this Agreement;

5. Performance of Other Agreements. Snap Lock shall timely keep and perform all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by the Companies under the terms of all other agreements now or hereafter existing between the Companies and the City during the Term of this Agreement; and

6. No Goods or Services. Snap Lock agrees the performance of any or all obligations of the Companies under the terms of this Agreement does not constitute the provision of goods or services to the City.

Security Brand's Additional Covenants

In consideration of the City's agreement to grant the Economic Development Incentive to Kodiak (an affiliated company) to facilitate the building of the new Mesquite Facility which Security Brands desires to lease and occupy upon the terms and conditions more fully set forth herein, Security Brands represents, covenants and agrees as follows, to-wit:

1. Lease of Mesquite Facility. Security Brands shall immediately lease the Mesquite Facility from Kodiak upon issuance of the CO to Kodiak for the Mesquite Facility;

2. Records and Reports. During the Term of this Agreement, Security Brands shall deliver to the City within thirty (30) days after written request, such documentation as the City may reasonably request to confirm compliance by Security Brands with the representations, covenants and agreements set forth in this Article VI;

3. Inspection. Security Brands shall provide the City, its agents and employees with access to the Mesquite Facility at such times as the City may reasonably request during the Term of this Agreement to conduct such inspections as the City deems reasonably necessary, or no more often than two (2) times per calendar year, in order to confirm compliance by Security Brands with the representations, covenants and agreements of Security Brands as set forth in this Agreement provided the City has given Security Brands at least seventy-two (72) hours prior written notice of such inspection. Such inspections shall be made during usual business hours and at such times so as to not interfere with the operations of Security Brands;

4. Representative of Security Brands to Accompany Inspections. Security Brands shall provide a representative of Security Brands to accompany the City during all inspections of the Mesquite Facility conducted by the City pursuant to Article VI, Section 4 above;

5. Timely Payment of Taxes. Security Brands shall timely pay all ad valorem taxes assessed against the business personal property of Security Brands used in the conduct of its business at the Mesquite Facility during the Term of this Agreement prior to the date such taxes become delinquent;

6. Security Brands Operations. Except as provided in Article X, Section 1 of this Agreement, for a period of no less than five (5) years Security Brands shall not vacate or abandon the Mesquite Facility and shall be open for business serving customers at the Mesquite Facility five (5) days a week for a minimum of six (6) hours per day from the CO Date through the Term of this Agreement except: (i) during National Holidays; and (ii) during an Event of Force Majeure;

7. Maintenance Obligations. Security Brands shall comply with all building codes, zoning ordinances and all other codes, ordinances and regulations of the City relating to their occupancy of the Mesquite Facility, at all times during the Term of this Agreement and shall maintain the Mesquite Facility in good repair at all times during the Term of this Agreement;

8. Compliance with Laws. Security Brands shall comply with all federal, state and local laws, ordinances and regulations relating to the ownership and operation of the Mesquite Facility during the Term of this Agreement;

9. Performance of Agreement. Security Brands shall timely keep and perform all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by Security Brands under the terms of this Agreement;

10. Performance of Other Agreements. Security Brands shall timely keep and perform all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by Security Brands under the terms of all other agreements now or hereafter existing between Security Brands and the City during the Term of this Agreement; and

11. No Goods or Services. Security Brands agrees the performance of any or all obligations of Security Brands under the terms of this Agreement does not constitute the provision of goods or services to the City.

ARTICLE VII

Conditions Precedent to Payment of the Economic Development Incentive

The Companies and the City hereby expressly acknowledge and agree that the City's obligation to pay the Economic Development Incentive to Kodiak shall expressly be conditioned upon the satisfaction of each and every one of the following conditions precedent (the "Conditions Precedent"), to-wit:

1. Purchase of the Land. Within 30 days after Kodiak's receipt of the Improvement Entitlements Kodiak shall close the purchase of the Land from the City for the Fair Market Value and execute a sales contract and deed in the same form attached as "**Exhibit D**" ("Sales Contract").

- a. *Survey and Title Policy.* Kodiak, shall at its option and at its sole expense obtain a survey and title policy in connection with the closing of the purchase of the Land.
- b. *Sale and Purchase of the Land.* The City and Kodiak acknowledge: (i) that the Land is located within the Zone; and (ii) the Land is to be developed under a project plan adopted by the City Council for the Zone and accordingly, the sale and purchase of the Land by City to Kodiak shall be pursuant to V.T.C.A., Local Government Code §272.001(b)(6).
- c. *Transfer of the Land.* At the time of sale, the Land will be transferred to Kodiak by a Special Warranty Deed subject to: (i) mineral reservations, severances and leases, if any, that affect the Land; (ii) validly existing easements, rights-of-way and prescriptive rights that affect the Land, whether of record or not; (iii) all presently recorded and validly existing restrictions, restrictive covenants, reservations, exceptions, covenants, conditions, interests and instruments that affect the Land; (iv) any discrepancies, conflicts or shortages in area or boundary lines, any encroachments or protrusions and any overlapping of improvements affecting the Land; (v) taxes and assessments against the Land from the date of closing and for all subsequent years, the payment of which the Kodiak assumes; and (vi) zoning regulations and ordinances of municipal and/or other governmental authorities affecting the Land (collectively the "Permitted Exceptions"). Kodiak agrees to accept title to the Land subject to the Permitted Exceptions.
- d. *Taxes.* Kodiak shall be responsible for and shall pay all taxes assessed against the Land from and after the date of closing on the purchase of the Land. This provision shall expressly survive the closing of the purchase of the Land.
- e. *Closing and Closing Costs.* The closing of the purchase of the Land: (i) shall take place at the offices of the City or at a title company mutually acceptable to City and Kodiak; and (ii) shall take place at 10:00 a.m., Central Standard Time, on a date that is within 30 days after Kodiak's receipt of the Improvement Entitlements (the "Closing"). At the Closing, Kodiak shall deliver the Fair Market Value to the City in immediately available funds; and (ii) City shall deliver a Special Warranty Deed to Kodiak transferring the Land to Kodiak subject to the Permitted Exceptions. City and Kodiak shall each be responsible for all costs and expenses incurred by or on behalf of such Party in connection with the sale and purchase of the Land, including such Party's attorney's fees. City and Kodiak represent and warrant to each other that they have not and will not work with any broker relative to the sale and purchase of the Land and that no brokerage commission is or will be due and payable in connection with the sale and purchase of the Land by the City to the Kodiak.
- f. *Failure to Purchase Land.* If Kodiak does not purchase the Land in accordance with the terms and conditions set forth herein, this Agreement will automatically and immediately terminate without notice.
- g. *Time of the Essence.* Time is of the essence with respect to the purchase of the Land.

2. Commencement and Construction of Improvements. Commencement of Vertical Construction of the Improvements shall occur no later than December 1, 2021. On or before January 31, 2023 Kodiak shall have fully constructed a commercial building on the Land consisting of at least 16,000 square feet as described and/or depicted in **Exhibit "B"** attached hereto and made a part hereof for all purposes (the "Improvements"). The Improvements must be constructed in compliance with all applicable laws and regulations as evidenced by the issuance by the City of a final inspection, final green tag, certificate of completion, or other equivalent, confirming completion of the requirements of the building permit issued by the City in connection with the construction of the Improvements;

3. Capital Investment. Kodiak shall have made expenditures in the collective amount of at least One Million and 00/100 DOLLARS (\$1,000,000.00) in connection with the Improvements and inclusive of the purchase price for the Land on or before January 31, 2023 (the "Capital Investment"). When calculating such expenditures, the Parties agree that no expenditure shall be included as part of the Capital Investment unless the expenditure is capitalized as a capital asset on the books of the Companies in accordance with generally accepted accounting principles;

4. Capital Investment Certificate. On or before March 31, 2023, each of the Companies shall have submitted to the City a certificate in such form as is reasonably acceptable to the City executed by a Company Representative certifying the amount of expenditures made by each of the Companies in connection with the construction of the Improvements as of January 31, 2023 (the "Capital Investment Certificate") and such Capital Investment Certificate shall confirm that the Companies have satisfied the Capital Investment requirement set forth in Article VII, Section 3 above;

5. Compliance with Development Standards for Improvements. The Improvements shall have been constructed in compliance with the Exterior Finish Plan including, without limitation (i) Improvements shall have been constructed in compliance with the elevations, materials overlay, composition overlay, scale overlay, proportion overlay, rhythm overlay, transparency overlay, articulation overlay, expression overlay, color overlay, and aesthetic methods set forth in the Exterior Finish Plan; and (ii) the paint colors, building products and materials used and/or installed in connection with the construction of Improvements shall comply with the Exterior Finish Plan;

6. Payment of Fees. Kodiak shall have timely paid to the City all impact fees, permit fees, development fees, review fees and inspection fees in connection with the Mesquite Facility including, without limitation, all Water, Wastewater and Roadway Impact Fees and the City shall have confirmed receipt of all such impact fees, permit fees, development fees, review fees and inspection fees.

7. Maintenance Obligations. The Mesquite Facility shall be in compliance with all building codes, zoning ordinances and all other codes, ordinances and regulations of the City as of the date of the Payment Request for the Economic Development Incentive and the Improvements shall be in good repair and condition;

8. Certificate of Occupancy. As required by the City Building Official, Kodiak and Security Brands shall each have Certificates of Occupancy issued. Additionally, Security Brands shall have moved into and shall have commenced operating the Security Brands business at or from at least 16,000 square feet of the Improvements;

9. Valuation of Mesquite Facility. The valuation of the Land and Improvements as appraised by DCAD as of the date of final completion of the Improvements and issuance of a certificate of occupancy shall be at least SEVEN HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$750,000.00);

10. Records and Reports. The Companies shall have delivered to the City copies of such invoices, paid receipts, payment records and such other documentation as the City may reasonably request to confirm compliance by the Companies with the Conditions Precedent;

11. Taxes. The Companies shall have timely paid all ad valorem taxes assessed against the Mesquite Facility and business personal property located at the Mesquite Facility as of the date of the Payment Request. Snap Lock shall promptly transfer all sales tax operations for Snap Lock to the Mesquite Facility address in Mesquite, Texas and shall provide proof of such by submitting a sales tax certificate or other appropriate documentation to the City no later than 60 calendar days after the Effective Date of this Agreement. At the time of each Annual Incentive Payment, the Mesquite Facility shall be the sole location of Snap Lock for all purposes, including but not limited to sales, and Snap Lock shall not have amended any prior or current sales tax filings related to the Mesquite Facility without the prior written consent of the City;

12. Performance of this Agreement. All of the Companies shall have timely kept and performed all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by each of the Companies under the terms of this Agreement and no Company Default shall then exist for any of the Companies and no event shall exist which, but for notice, the lapse of time, or both, would constitute a Company Default by any of the Companies under the terms of this Agreement;

13. Performance by the Companies of other Agreements. All of the Companies shall have timely kept and performed all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by each of the Companies under the terms of all other agreement(s) now and hereafter existing between each of the Companies 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 any of the Companies under the terms of such agreement(s);

14. Inspection. At the option of the City, the City shall have inspected the Mesquite Facility to confirm the Companies compliance with the terms and provisions of this Agreement;

15. No Conviction for Undocumented Workers. As of the date of the execution by each of the Companies of their respective Certificates of Compliance and as of the date of each payment by the City to Kodiak of the Economic Development Incentive, none of the Companies shall not have been convicted by a court of competent jurisdiction of knowingly employing Undocumented Workers to work for any of the Companies at the Mesquite Facility or at any other branch, division or department of any of the Companies;

16. Operations of the Companies. Except as provided in Article X, Section 1 of this Agreement, Kodiak shall not have sold, vacated, or abandoned the Mesquite Facility and Security Brands shall have been open for business serving customers at the Mesquite Facility five (5) days a week for a minimum of six (6) hours per day from the CO date through the date each Payment Request is submitted, except: (i) during National Holidays; and (ii) during an Event of Force Majeure. Snap Lock shall not have vacated or abandoned the Mesquite Facility and shall have been open for business serving customers at the Mesquite Facility five (5) days a week for a minimum of six (6) hours per day from the CO date through the date each Payment Request is submitted, except: (i) during National Holidays; and (ii) during an Event of Force Majeure. Security Brands shall not have vacated or abandoned the Mesquite Facility and shall have been open for business serving customers at the Mesquite Facility five (5) days a week for a minimum of six (6) hours per day from the CO date through the date each Payment Request is submitted, except: (i) during National Holidays; and (ii) during an Event of Force Majeure;

17. Employment Opportunities. Security Brands shall continuously employ a minimum of fifteen (15) Full-time Employees at the Mesquite Facility from the CO date through the Term of this Agreement except during an Event of Force Majeure. In the event an employee is terminated or resigns, resulting in Security Brands employing less than fifteen (15) employees, Security Brands shall promptly advertise, and fill said position. With each Payment Request, Security Brands shall submit a written verification evidencing compliance with this Article VII, 17;

18. Payment Request. Kodiak shall submit a Payment Request for each Annual Incentive Payment to the City accompanied by any required documentation, and as of the date of such Payment Request, all terms of this Agreement, including Conditions Precedent set forth herein shall have been satisfied and are then continuing. For each Annual Incentive Payment, Kodiak shall send a Payment Request to the City's Finance Director at 757 N. Galloway, Mesquite, Texas 75149, for each Annual Incentive Payment under this Agreement no later than the following dates ("Annual Incentive Payment Request Deadlines"):

The First Annual Incentive Payment Request Deadline: The later date of either: 1. one year from the Effective Date of this Agreement or 2. forty-five (45) days after the Companies obtain all required COs under this Agreement.

<i>Second Annual Incentive Payment Request Deadline:</i>	February 22, 2023
<i>Third Annual Incentive Payment Request Deadline:</i>	February 22, 2024
<i>Fourth Annual Incentive Payment Request Deadline:</i>	February 22, 2025
<i>Fifth Annual Incentive Payment Request Deadline:</i>	February 22, 2026

The City shall issue each payment within 45 days of the Annual Incentive Payment Request Deadline if the Payment Request was in full compliance with this Agreement and timely received. If Kodiak submits a Payment Request after the Annual Incentive Payment Request Deadline, the City's payment deadline shall be extended to forty-five (45) days after the City's receipt of the Payment Request. With the exception of the first Annual Incentive Payment, if Kodiak submits a Payment Request more than one year after the applicable Annual Incentive Payment Request Deadline, Kodiak agrees it is an irrevocable waiver of their right to request said payment and the City shall not be obligated to pay the Payment Request or any future Annual Incentive Payments under this Agreement thereafter.

- a. Supporting Documentation Submitted with Payment Request. In addition to any other requirements in this Agreement, each such Payment Request shall be accompanied by a Certificate of Compliance dated effective as of the date of the Payment Request. Additionally, Kodiak shall submit in support of its Payment Request any information reasonably requested by the City to verify compliance of the Companies with this Agreement. Kodiak shall be responsible for promptly obtaining and providing to the City any documents or information the City requests from Snap Lock and Security Brands.

ARTICLE VIII

Economic Development Incentive

Economic Development Incentive. The City hereby approves, subject to the Conditions Precedent and the covenants and limitations set forth in this Agreement, an economic development grant to Kodiak. The Economic Development Incentive (as hereafter defined) shall be paid out in five (5) annual installments (“Annual Incentive Payment(s)”). Under no circumstances shall the City’s obligations under this Article VIII be deemed to create any debt within the meaning of any constitutional or statutory provision and shall in no way be construed as being secured by ad valorem taxes or financed by debt.

1. Economic Development Incentive Amount. Notwithstanding anything contained in this Agreement to the contrary, the Parties agree that the maximum amount of the Economic Development Incentive (as hereafter defined) payable under the terms of this Agreement is the sum of:

- a. the actual cost paid by Kodiak to purchase the Land for up to a maximum of TWO HUNDRED SIXTY-FIVE THOUSAND EIGHT HUNDRED FORTY-SIX AND 00/100 DOLLARS (\$265,846.00); and
- b. an amount equal to the portion of City Fees paid by Kodiak to the City in connection with the Improvements under this Agreement which are in excess of THIRTY-FIVE THOUSAND AND 00/100 DOLLARS (\$35,000.00) (the total amount of Article VIII sections 1.a. and 1.b. hereafter collectively referred to as the “Economic Development Incentive”).

2. Annual Incentive Payments. Each Annual Incentive Payment by the City to Kodiak shall be made in accordance with this Agreement and expressly be conditioned upon satisfaction of the terms of this Agreement including but not limited to the Conditions Precedent in Article VII: (i) as of the date of the Payment Request submitted in connection with such payment; and (ii) as of the date of such payment.

3. Limitation of Economic Development Incentive. Notwithstanding anything contained in this Agreement to the contrary, the Parties agree that the maximum collective amount of the Economic Development Incentive payable under the terms of this Agreement is the sum of TWO HUNDRED SIXTY-FIVE THOUSAND EIGHT HUNDRED FORTY-SIX AND 00/100 DOLLARS (\$265,846.00) and all amounts to be paid by City in accordance with ARTICLE VIII Section 1.b. above. If there is any conflict between this Article VIII, Section 3 and any other term or provision of this Agreement, this Article VIII Section 3 shall control.

4. Funds Available for Payment of Economic Development Incentive. The Economic Development Incentive payable by the City to Kodiak as more fully set forth in this Agreement is not secured by a pledge of ad valorem taxes, financed by the issuance of any bonds or other obligations payable from ad valorem taxes of the City or payable from the Water, Wastewater and Roadway Impact Fees paid by Kodiak to the City. The Economic Development Incentive payable hereunder shall be paid only from funds of the City authorized by Article III, Section 52-a, of the Texas Constitution and Texas Local Government Code. The Parties agree no other source of funds of the City is subject to the payment of the Economic Development Incentive. The Economic Development Incentive is subject to the City’s appropriation of funds for such purpose to be paid in the budget year for which the Economic Development Incentive is to be paid. This Article VIII, Section 4 shall expressly survive the expiration or termination of this Agreement.

5. Economic Development Incentive Payment to Kodiak Only. Both Security Brands and Snap Lock hereby agree to Kodiak receiving all Economic Development Incentive(s) payments due under this Agreement. Furthermore, both Security Brands and Snap Lock agree they have obtained sufficient consideration to make this Agreement binding, specifically the benefit of the opportunity to relocate to Mesquite to lease and occupy the new Improvements, which are being built as part of this Agreement.

THE PARTIES ACKNOWLEDGE AND AGREE THAT UNDER NO CIRCUMSTANCE WILL SNAP LOCK OR SECURITY BRANDS BE ELIGIBLE FOR ECONOMIC DEVELOPMENT INCENTIVE PAYMENTS OR ANY OTHER MONETARY BENEFITS UNDER THIS AGREEMENT. BOTH SNAP LOCK AND SECURITY BRANDS HERBY WAIVE ANY CLAIM OR ASSERTION TO

THE ECONOMIC DEVELOPMENT INCENTIVE AND ANY RELATED CLAIMS UNDER THIS AGREEMENT.

6. Rezoning Initiated by City. As part of this Agreement and to facilitate the development of the Land, within thirty (30) days of the date of the Effective Date, the City agrees to initiate a planned development zoning for the Land for commercial use, to allow warehouse/distribution, and manufacturing of small scale items inside a completely enclosed building, subject to any conditions and restrictions the City deems reasonable. The City will also initiate removal of overlay(s) if deemed necessary. City shall deliver to Kodiak copies of all documentation required to affect such changes and Kodiak shall have approved the terms of any necessary application(s) as sufficient for Kodiak's construction and use of the Improvements.

7. Sale of Property, Waiver of Remaining Incentive Payment. To the extent not in conflict with any provision stated herein to the contrary, Kodiak may sell the Mesquite Facility at any time and at its discretion (the "Property Sale") and either of Security Brands or Snap Lock may sell all of its ownership interests or business assets at its discretion (the "Business Sale"). Upon the closing of the Property Sale, (i) this Agreement shall terminate, and Kodiak shall waive its right to payment of any further amount of the Economic Development Incentive to which Kodiak might otherwise then be entitled, and (ii) each of Security Brands and Snap Lock shall cease operations at, and vacate, the Mesquite Facility and to the extent not provided otherwise herein, each party to this Agreement shall be released from any further obligation under this Agreement. Upon the closing of a Business Sale, either of Security Brands or Snap Lock, as seller of the interests, shall cease operations at, and vacate, the Mesquite Facility and to the extent not provided otherwise herein, the applicable company and the City shall be released from any further obligation under this Agreement.

ARTICLE IX

Defaults and Remedies

1. Company Default. The Companies shall all be in default of this Agreement: (i) in the event that Kodiak fails to purchase the Land in accordance with this Agreement; (ii) upon the occurrence of an Event of Bankruptcy or Insolvency of any of the Companies; (iii) upon any assignment of this Agreement by any of the Companies in violation of Article X, Section 1 of this Agreement; or (iv) if any of the Companies fail to timely keep or perform any term, provision, agreement, covenant, condition or obligation to be kept or performed by any of the Companies under the terms of this Agreement and such failure continues for sixty (60) days after written notice by the City to any of the Companies (each a "Company Default").

2. City Remedies. In the event of a Company Default, the City shall have no obligation to pay the Economic Development Incentive to Kodiak and the City shall have the right to: (i) terminate this Agreement with all Parties immediately by written notice to the Companies; (ii) exercise any and/or all other rights and/or remedies available to the City pursuant to the laws of the State of Texas and (iii) in the event Snap Lock amends any sales tax filing at the Mesquite Facility within (4) four years of end of the Term of this Agreement that negatively affects sales tax paid to the City, then the Companies shall pay the City a sum equal to the greater of the following: (a) the amount of the last Annual Incentive Payment or (b) two (2) times the negative impact to City sales taxes. This Section IX.2. shall expressly survive the expiration or termination of this Agreement.

3. City Default. The City shall be in default of this Agreement: (i) upon the occurrence of an Event of Bankruptcy or Insolvency of the City; or (ii) if the City fails to timely keep or perform any term, provision, agreement, covenant, condition or obligation to be kept or performed by the City under the terms of this Agreement and such failure continues for sixty (60) days after written notice by a Party to the City (a "City Default").

4. Companies Remedies. Upon the occurrence of a City Default, the Companies shall have the right to terminate this Agreement by written notice to the City. The City and the Companies acknowledge and agree that this Agreement is not a contract for goods or services and the City's immunity from suit is not waived pursuant to Subchapter I of Chapter 271, V.T.C.A., Local Government Code, as amended. Alternatively, if and only in the event a court of competent jurisdiction determines the City's immunity from suit is waived under Subchapter I of Chapter 271, V.T.C.A., Local Government Code, the Parties hereby acknowledge and agree that in a suit against the City for breach of this Agreement:

- (i) the total amount of damages, if any, awarded against the City shall be limited to actual damages in an amount not to exceed FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00);

- (ii) the recovery of damages against the City shall not include consequential, punitive, exemplary, or speculative damages;
- (iii) the Parties shall not recover attorney's fees or court costs; and
- (iv) the Companies shall not be entitled to specific performance or injunctive relief against the City.

5. Joint and Several Liability. Kodiak, Snap Lock, and Security Brands, acknowledge and agree the liability of each such individual, corporation, partnership or other business association to perform all terms, conditions, and obligations hereunder shall be deemed to be joint and several. Furthermore, default by any one of the Companies constitutes a default for all Companies under this Agreement and the City may immediately terminate this Agreement with the Companies.

6. 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 Companies may not be assigned or transferred by the Companies without the prior written consent of the City, which may be withheld in the City's sole discretion. In the event one or more of the Companies are a real estate investment trust, a corporation or limited liability company, the sale, transfer or assignment of a controlling interest in the real estate investment trust, or the sale, transfer or assignment of a controlling interest in the shares of the applicable company, or the sale, transfer or assignment of a controlling interest in the membership interests of the applicable company shall constitute an assignment of this Agreement and the failure of the Companies to obtain the prior written consent of the City prior to such sale, transfer or assignment shall be an attempted assignment of this Agreement in violation of this Agreement and shall constitute a breach of this Agreement by the Companies. In the event one or more of the Companies 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 applicable company's general or managing partner shall constitute an assignment of this Agreement and the failure of the Companies 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 Companies. Furthermore, neither the Companies nor any approved assignee or their legal representatives or successors in interest shall, by operation of law or otherwise, collaterally assign, mortgage, pledge, encumber or otherwise transfer any interest in any receivables under this Agreement or any part hereof, or the interest of the Companies or any approved assignee under this Agreement, without obtaining the City's prior written consent, which may be withheld in the City's sole discretion. Any consent by the City to any assignment of this Agreement shall be held to apply only to the specific transaction thereby authorized and shall not constitute a waiver of the necessity for such consent to any subsequent assignment. No assignment of this Agreement shall contain any terms in contravention of any provisions of this Agreement. No assignment of this Agreement shall be effective unless: (i) the assignment is in writing signed by the assignor and the assignee; (ii) the assignee assumes the assignor's obligation to timely keep and perform all terms, provisions, agreements, covenants, conditions and obligations of the assignor under the terms of this Agreement; (iii) a true and correct copy of such assignment has been provided to the City; and (iv) the City has approved such assignment in writing. 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 Companies and in the event any of the Companies attempt to assign this Agreement in violation of this Article X, Section 1, the City shall have the right to terminate this Agreement with all Parties by written notice to the Companies.

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 deemed 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 and deemed delivered, whether actually received or not, 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 and deemed delivered, whether actually received or not, one (1) business day after deposit with the nationally recognized courier service. Notices given in any other manner shall be effective and deemed delivered 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:

SECURITY BRANDS: Security Brands, Inc.
c/o Christopher Scott Brown
435 East US Hwy 80
Sunnyvale, Texas 75182
Fax: 972-226-9990
Phone: 972-880-1485
Email: cbrown@securitybrandsinc.com

SNAP LOCK: Snap Lock Tech, LLC
c/o Christopher Scott Brown
435 East US Hwy 80
Sunnyvale, Texas 75182
Fax: 972-226-9990
Phone: 972-880-1485
Email: cbrown@securitybrandsinc.com

KODIAK: Kodiak Capital Partners, LLC
c/o Christopher Scott Brown
435 East US Hwy 80
Sunnyvale, Texas 75182
Fax: 972-226-9990
Phone: 972-880-1485
Email: cbrown@securitybrandsinc.com

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

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

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 any of the Companies 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. Remedies Cumulative. The Parties hereby agree that each right and remedy of the Parties provided for in this Agreement shall be cumulative.

5. 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.

6. Modification. This Agreement may only be revised, modified or amended by a written document signed by all Parties to this Agreement. Oral revisions, modifications or amendments are not permitted.

7. 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 nor against any Party.

8. 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 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. This Agreement is expressly made subject to City's governmental immunity, including but not limited to the Texas Civil Remedies Code and all applicable state and federal law. The Parties expressly agree that no provision of the Agreement is in any way intended to constitute a waiver of any immunities from suit or from liability that the City has by operation of law.

9. 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 and agree to submit to the personal and subject matter jurisdiction of such courts.

10. WAIVER OF CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR SPECULATIVE DAMAGES. SNAP LOCK, SECURITY BRANDS, AND KODIAK ALL AGREE THAT, IN CONNECTION WITH ANY ACTION, SUIT OR PROCEEDING ARISING FROM OR RELATING TO THIS AGREEMENT, SNAP LOCK, SECURITY BRANDS, AND KODIAL ALL WAIVE TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY CLAIM FOR CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR SPECULATIVE DAMAGES.

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

12. 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.

13. 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.

14. 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.

15. 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.

16. Entire Agreement. This Agreement together with the referenced exhibits, 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.

17. Authority. Each of the Companies represent their respective company 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 of the Companies represents that their respective company 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 each of the Companies has the authority to sign this Agreement on behalf of their respective company.

18. Anti-Boycott Verification. If Texas Government Code Chapter 2271 is applicable to this Agreement, by signing below, each of the Companies hereby represent, verify, and warrant that their company does not boycott Israel and will not boycott Israel during the term of the Agreement.

19. Iran, Sudan and Foreign Terrorist Organizations. If Section 2252.153 of the Texas Government Code is applicable to this Agreement, by signing below each of the Companies hereby represents, verifies, and warrants that (i) it does not engage in business with Iran, Sudan or any foreign terrorist organization and (ii) it is not listed by the Texas Comptroller under Section 2252.153, Texas Government Code, as a company known to have contracts with or provide supplies or services to a "foreign terrorist organization" as defined in Section 2252.151 of the Texas Government Code.

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

21. Usury Savings Clause. The Companies and the City intend to conform strictly to all applicable usury laws. All agreements of the City and the Companies are hereby limited by the provisions of this Article X, Section 21 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 21 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 Kodiak 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.

22. Non-Collusion. The Companies represent and warrant that neither Companies nor anyone on any of the Companies' 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.

23. Form 1295 Certificate. The Companies agrees to comply with Texas Government Code, Section 2252.908 and in connection therewith, the Companies agree 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.

24. Development Standards. The Parties acknowledge that effective September 1, 2019, the Legislature of the State of Texas enacted HB 2439, codified at V.T.C.A., Government Code, Title 10, Subtitle Z "*Miscellaneous Provisions Prohibiting Certain Government Actions*", Chapter 3000 "*Governmental Action Affecting Residential and*

Commercial Construction, regarding the regulation by municipalities of building products, materials, and aesthetic methods for residential and commercial buildings (the "Act"). Specifically, §3000.002 of the Act prohibits cities from adopting or enforcing a rule, charter provision, ordinance, order, building code or other regulation that prohibits or limits the use or installation of certain building products or materials or that establishes certain standards for building products, materials or aesthetic methods. Kodiak acknowledge that, notwithstanding the Act, in consideration of the agreement of the City to pay the Economic Development Incentives to Kodiak under the terms and subject to the conditions set forth in this Agreement, Kodiak is contractually agreeing: (i) to construct the façade and elevations of all of the Improvements to conform to the Exterior Finish Plan; (ii) to construct Improvements in compliance with the Exterior Finish Plan including, without limitation, Kodiak agrees: (a) to use and install the paint colors, building products and materials as set forth in the Exterior Finish Plan; and (b) to comply with the elevations, materials overlay, composition overlay, scale overlay, proportion overlay, rhythm overlay, transparency overlay, articulation overlay, expression overlay, color overlay, and aesthetic methods as set forth in the Exterior Finish Plan; The Parties acknowledge that the provisions of this Article XI, Section 24 is material to the City's agreement to grant the Economic Development Incentives and is a bargained for consideration between the Parties.

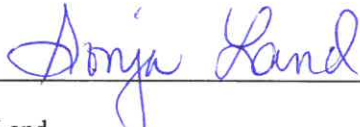
25. Execution of Agreement by Parties. If this Agreement is not executed by the Companies and the City on or before March 1, 2021, this Agreement will be null and void and of no force or effect.


26. 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: 
Sonja Land
City Secretary
Date: 2.26.2021

By: 
Name: Cliff Keheley
Title: City Manager
Date: 2-26-21

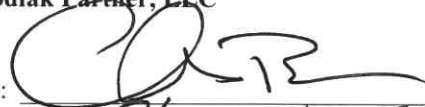
APPROVED AS TO FORM:
David L. Paschall, City Attorney

By: 
Stephanie Neal, Asst. City Attorney

[SIGNATURES CONTINUE ON NEXT PAGE]


KODIAK:

Kodiak Partner, LLC

By: 
Name: Christopher S Brown
Title: CEO
Date: 2/21/2021

SECURITY BRANDS:

Security Brands, Inc.

By: 
Name: Christopher S Brown
Title: CEO
Date: 2/21/2021

SNAP LOCK:

Snap Lock Tech, LLC


By: 
Name: Christopher S Brown
Title: CEO
Date: 2/21/2021

EXHIBIT "A"
TO
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

Legal Description of Land

EXHIBIT "A"

BEING a tract of land out of the D.S. CARVER SURVEY, Abstract No. 342, City of Mesquite, Dallas County, Texas and being more particularly described as follows:

BEGINNING at a 50d nail found in the North right-of-way of Military Parkway (variable width right-of-way) and being the Southeast corner of a tract of land conveyed to the City of Mesquite by deed recorded in Volume 85201, Page 1632 and 1636, Deed Records, Dallas County, Texas;

THENCE North 00 degrees 07 minutes West along the East line of said City of Mesquite tract and continuing along the East line of a tract of land conveyed to First State Bank by deed recorded in Volume 91088, Page 4082, Deed Records, Dallas County, Texas for a total distance of 365.10 feet to a 1/2 inch iron rod set for corner, said point being in the South right-of-way of Scyene Road (variable width right-of-way);

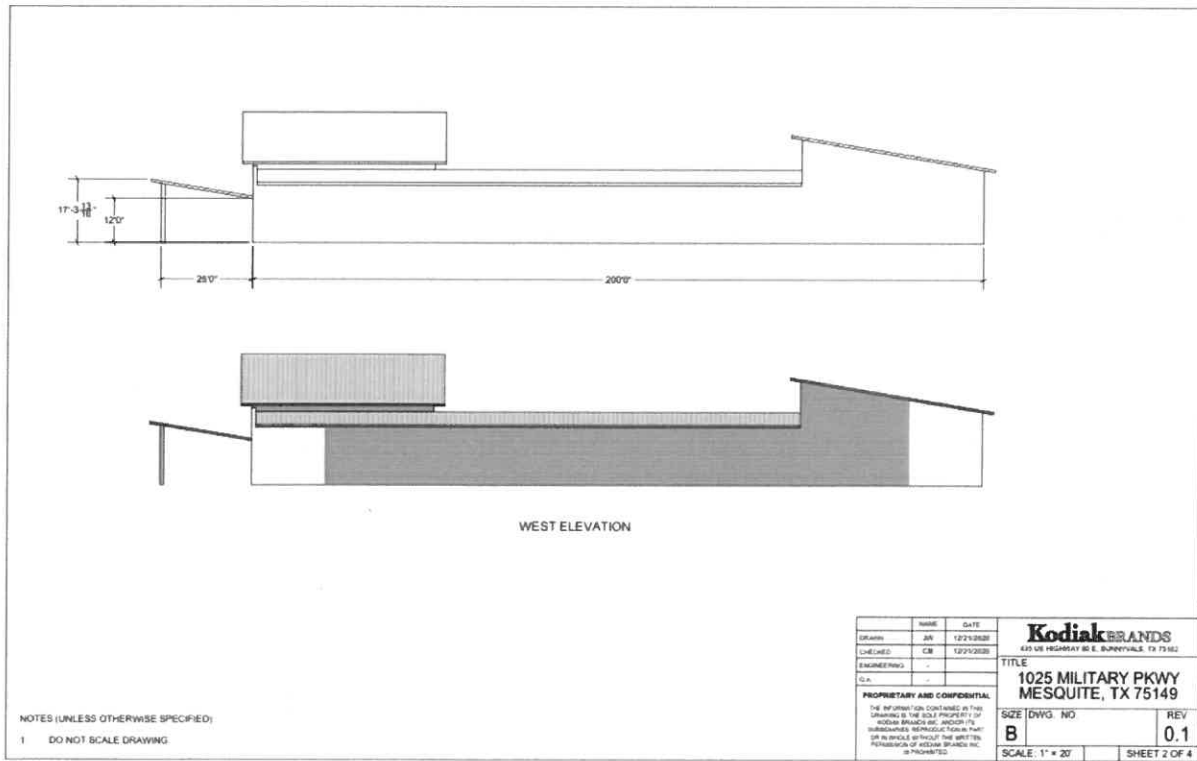
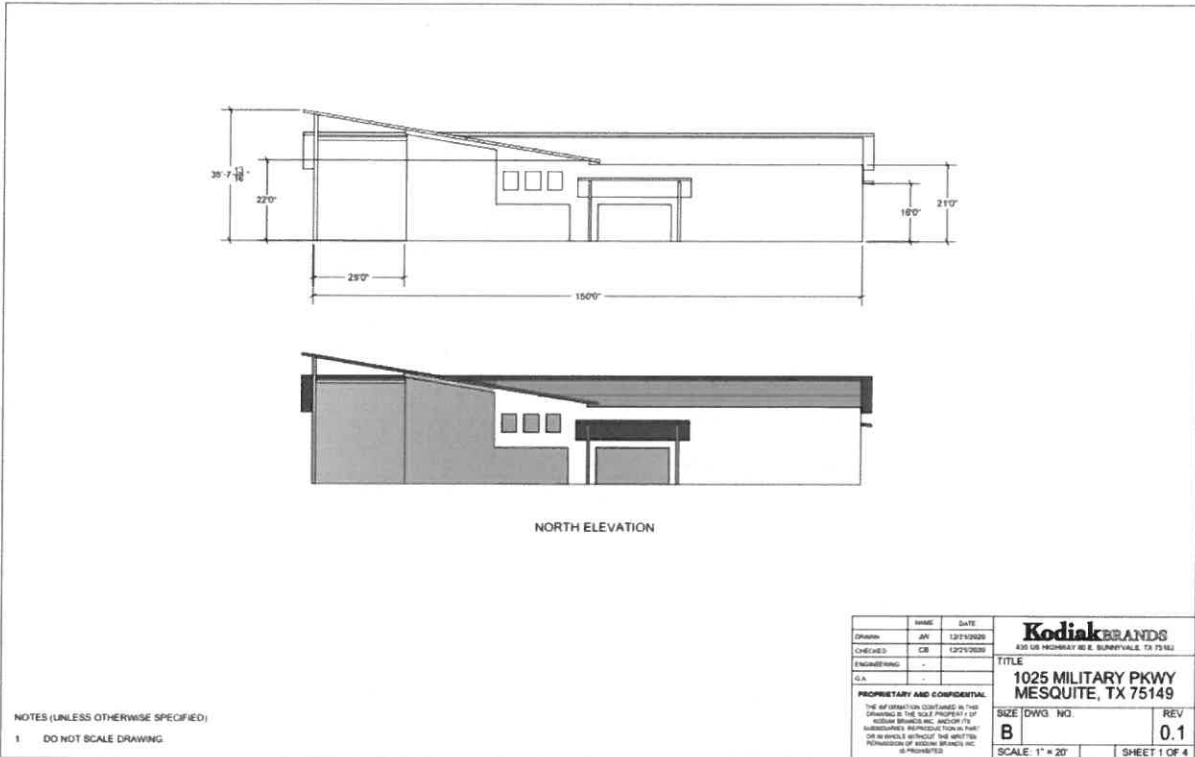
THENCE Easterly along the South right-of-way of Scyene Road, in a curve to the left with a radius of 5779.65 feet and a central angle of 02 degrees 17 minutes an arc distance of 230.33 feet to a 1/2 inch iron rod found for corner (chord bears South 80 degrees 09 minutes East at 230.31 feet) said point being the Northwest corner of a tract of land conveyed to Gospel Tabernacle;

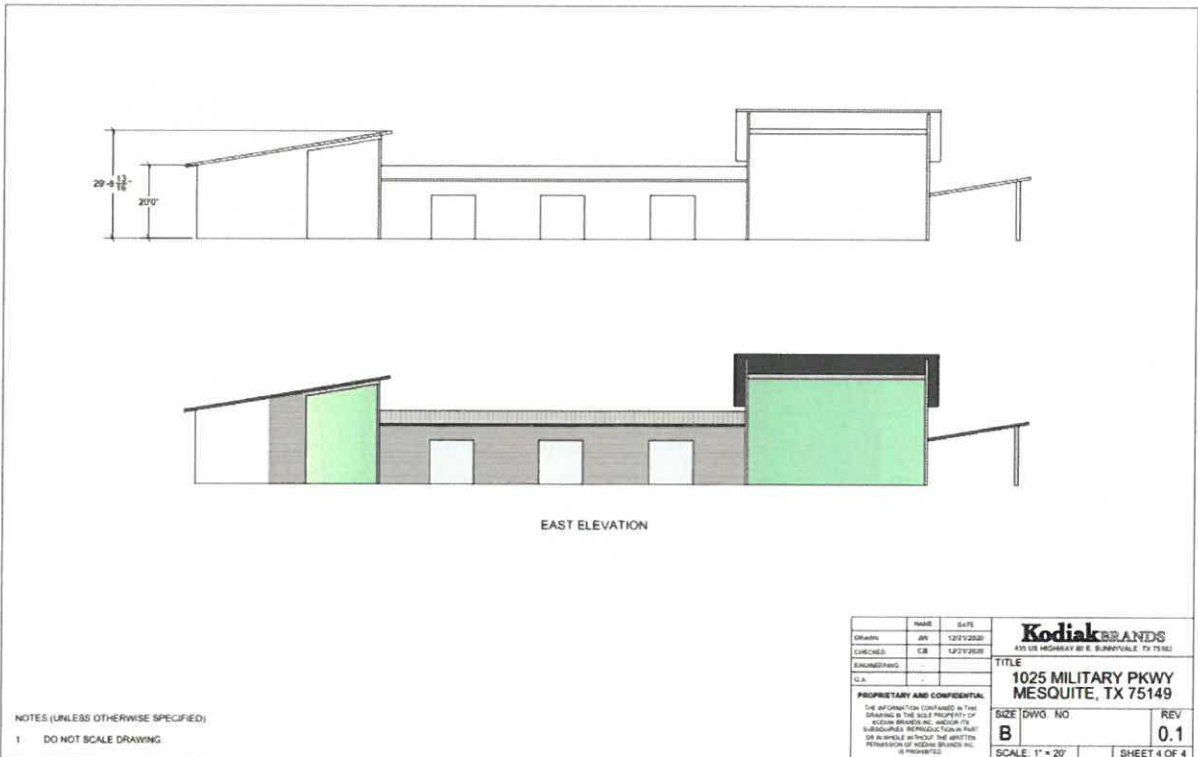
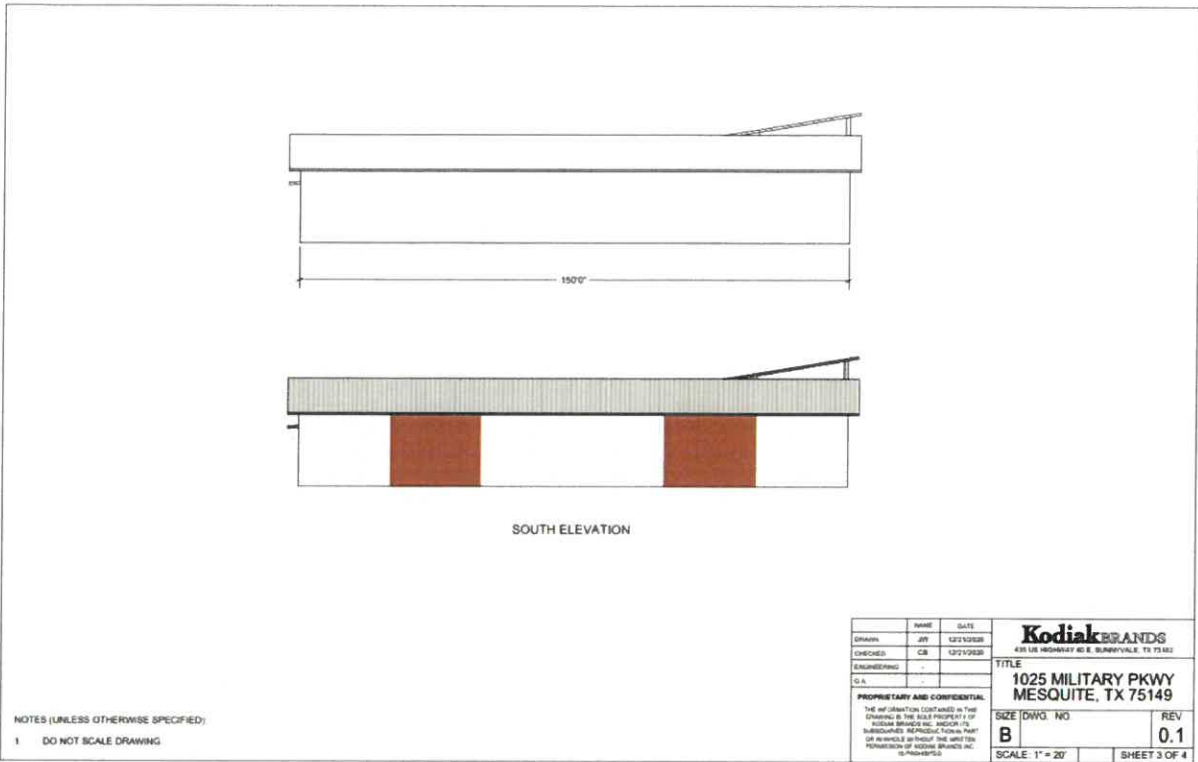
THENCE South 00 degrees 52 minutes West along the West line of said Tabernacle tract and continuing along the West line of a tract of land conveyed to First State Bank for a total distance of 339.78 feet to a 1/2 inch iron rod set for corner, said point being in the North right-of-way of Military Parkway;

THENCE North 86 degrees 22 minutes West along the North right-of-way of Military Parkway a distance of 221.50 feet to the PLACE OF BEGINNING and containing 78,812 square feet or 1.8093 acres of land.

EXHIBIT "B"
TO
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

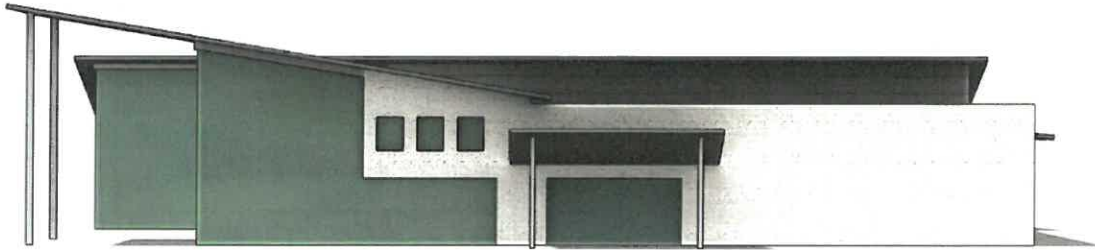
Depiction of Improvements





North Facade (Main Entrance)

1025 Military Pkwy, Mesquite, TX 75149



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PH: KATHY HARTZ

East Facade

1025 Military Pkwy, Mesquite, TX 75149



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PH: KATHY HARTZ

NE Corner

1025 Military Pkwy, Mesquite, TX 75149

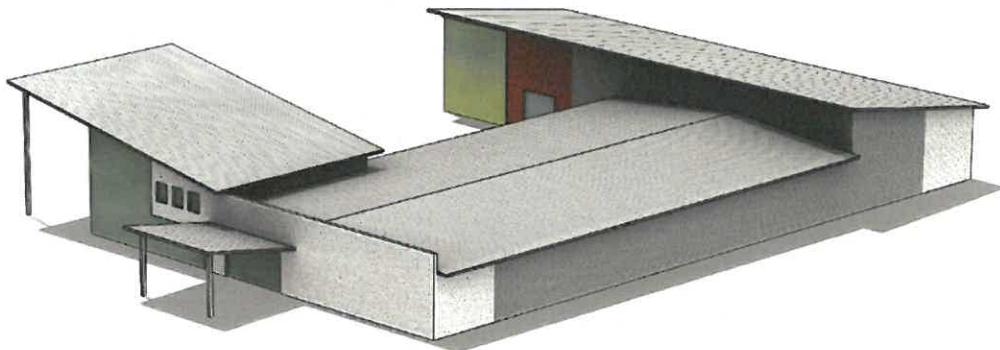


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PH 10210208

NW Corner

1025 Military Pkwy, Mesquite, TX 75149

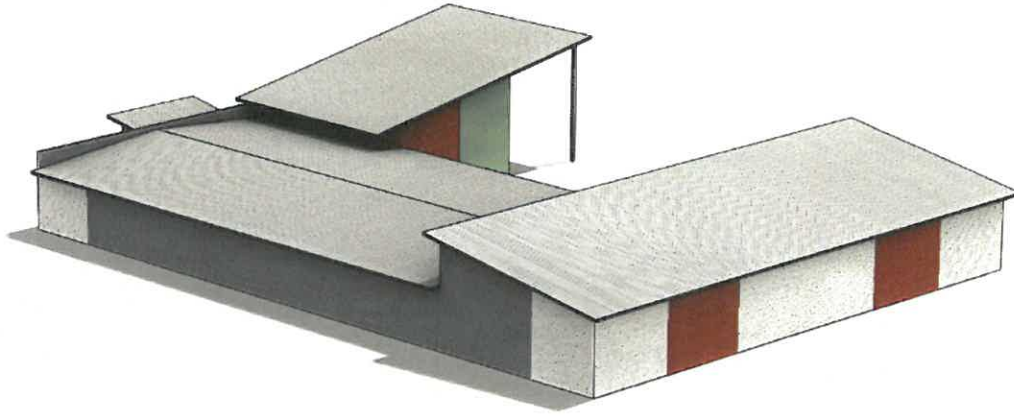


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PH 10210208

SW Corner

1025 Military Pkwy, Mesquite, TX 75149

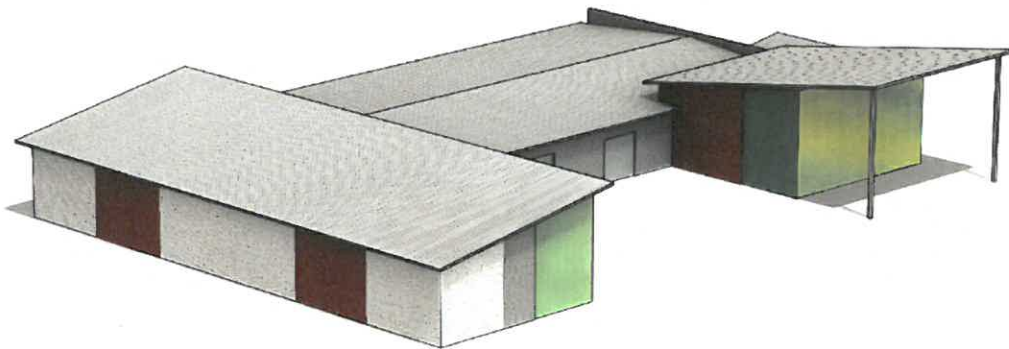


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SW 10250209

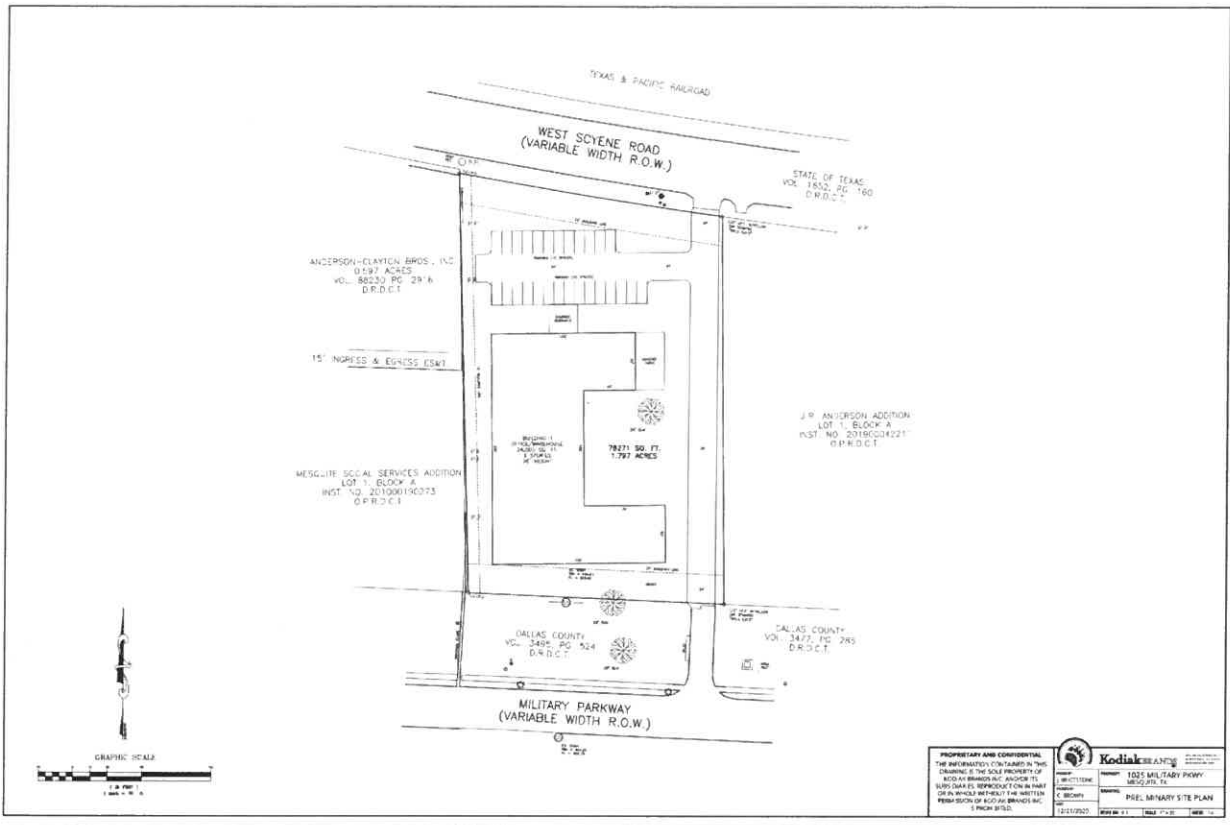
SE Corner

1025 Military Pkwy, Mesquite, TX 75149



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SE 10250209



PROPRIETARY AND CONFIDENTIAL			Kodiak	
THE INFORMATION CONTAINED IN THIS DRAWING IS THE SOLE PROPERTY OF KODIAK AND SHALL REMAIN THE PROPERTY OF KODIAK. NO PART OF THIS DRAWING IS TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, WITHOUT THE WRITTEN PERMISSION OF KODIAK. © 2011 KODIAK			PROJECT	103 MILITARY PARKWAY MESQUITE, TX
DATE	12/11/2012	DESIGNER	PER: MARY S'ITE PLAN	
SCALE	1" = 100'	DATE	12/11/2012	

EXHIBIT "C"
TO
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

Exterior Finish Plan

Proposed Building Materials

1025 Military Pkwy, Mesquite, TX 75149

A White Brick Veneer



B Horizontal Metal Siding



C Wood-Look Composite Cladding



D AP Panel Metal Roofing



E Storefront Glazing with Aluminum Frame

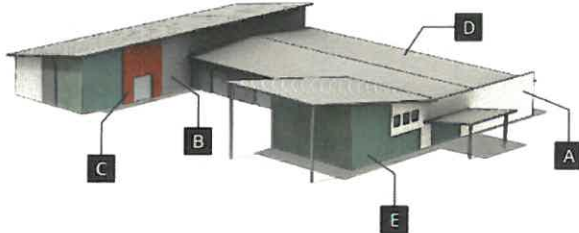


EXHIBIT “D”
TO
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT
Sale of Land Contract and Deed

AGREEMENT FOR THE SALE OF REAL PROPERTY

This Agreement for the Sale and Exchange of Real Property (this “**Agreement**”), is made by and between the City of Mesquite, a Texas home rule municipality (the “**City**”) and Kodiak Capital Partners, LLC, a Texas limited liability company, (hereinafter “**Purchaser**”). City and Purchaser are hereinafter sometimes individually referred to as a “**Party**” and sometimes collectively referred to as the “**Parties**”.

WHEREAS, the City owns a certain tract of real property located in the City of Mesquite, Texas, consisting of approximately 1.8093 acres and being commonly known as 1025 Military Parkway, Mesquite, Texas 75149 and being more particularly described in **Exhibit A** attached hereto and made a part hereof for all purposes (the “**Tract**”); and

WHEREAS, the City created the Towne Centre Reinvestment Zone Number Two, City of Mesquite, Texas by Ordinance No. 3257 approved by the City Council of the Mesquite (“**City Council**”) on September 21, 1998, to promote development or redevelopment in such reinvestment zone, in accordance with the Tax Increment Financing Act, V.T.C.A, Tax Code, Chapter 311 and the geographic area of the original zone has been increased by Ordinance No. 4529, approved by the City Council on December 18, 2017; and

WHEREAS, the Towne Centre Reinvestment Zone Number Two, City of Mesquite, Texas, as created by Ordinance No. 3257, as now and hereafter amended including, is hereinafter collectively referred to as the “**Zone**”; and

WHEREAS, the Tract is located within the Zone and that the City desires to have the Tract developed under the project plan adopted by the City Council for the Zone; and

WHEREAS, Purchaser has entered into a certain Economic Development Contract dated _____, 2021 (hereinafter the “**Contract**”), with the City to purchase the Tract; and

WHEREAS, Purchaser desires to purchase and develop the Tract, commonly known as 1025 Military Parkway, a light industrial development; and

WHEREAS, the development of the Tract is expected to (i) create new employment opportunities in the City, (ii) increase ad valorem real and personal property taxes assessed and collected by the City (iii) increase sales tax collected by the City and (iv) promote development and stimulate business and commercial activity in the City; and

WHEREAS, the sale of the Tract (i) is being made pursuant to §272.001(b)(6) of the Texas Local Government Code; (ii) is for the public purpose of creating new employment opportunities in the City, increasing the City’s tax base, promoting development and stimulating business and commercial activity in the City, and (iii) will benefit the City and its citizens.

NOW, THEREFORE, for and in consideration of the premises and mutual covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. **Purchase and Sale of the Tract.**

Subject to the terms and conditions set forth herein, City agrees to sell the Tract to Purchaser and Purchaser agrees to purchase the Tract from City.

2. **Price and Payment.**

The purchase price to be paid by Purchaser to the City for the purchase of the Tract shall be the sum of TWO HUNDRED SIXTY-FIVE THOUSAND EIGHT HUNDRED FORTY-SIX AND 00/100 DOLLARS (\$265,846.00) the "**Tract Purchase Price**"). The Tract Purchase Price shall be payable in immediately available funds acceptable to the Title Company (as hereinafter defined) at Closing (as hereinafter defined).

3. **Earnest Money and Independent Consideration.**

Within seven (7) days after the Effective Date (as hereinafter defined), Purchaser shall deliver the sum of TEN THOUSAND AND 00/100 DOLLARS (\$10,000) in immediately available funds to Reunion Title Company, Attn: _____, Telephone, Facsimile _____, E-mail: _____ (the "**Escrow Agent**"), at 129 N Collins Rd #2202, Sunnyvale, Texas 75182 (the "**Title Company**"), to be held by the Title Company as earnest money for the purchase of the Tract (the "**Tract Earnest Money**") pursuant to the terms of this Agreement. ONE THOUSAND AND 00/100 DOLLARS (\$1,000) of the Tract Earnest Money (the "**Tract Independent Consideration**") has been bargained for and agreed to as consideration for Purchaser's option to purchase Tract and for City providing the Tract Inspection Period (as hereinafter defined) to Purchaser and, notwithstanding any provision in this Agreement to the contrary, the Tract Independent Consideration shall be nonrefundable to Purchaser in all circumstances and, at any time that this Agreement provides that the Tract Earnest Money shall be returned to Purchaser, the amount returned to Purchaser shall be net of the Tract Independent Consideration and, at such time, the Tract Independent Consideration shall be delivered to City. At Closing (as hereinafter defined), all Tract Earnest Money will be applied as a credit against the Tract Purchase Price.

4. **Closing.**

Unless this Agreement is sooner terminated as provided herein, the closing ("Closing") of this Agreement shall be held at the offices of the Title Company (via mail-in escrow) on _____, 2021, or such earlier date after the expiration of all inspections periods, title review periods and title cure periods more fully set forth herein, as may be designated by Purchaser upon not less than 10 business days' prior written notice to City (the "Closing Date"). If either Party fails to close by the Closing Date, the non-defaulting Party may exercise the remedies in Section 12 of this Agreement.

5. **Closing Costs.**

All closing costs (except attorney's fees) incurred in connection with the sale and purchase of the including, without limitation, the cost of tax certificates, Title Company escrow fees, recording fees, surveys, the premium for an Owner's Title Policy covering the Tract issued to Purchaser in the amount of the Tract Purchase Price, shall be paid by Purchaser.

6. **Survey, Title Policy and Title Review Period.**

A. **Survey.**

Purchaser, at Purchaser's sole cost and expense, shall obtain an on-the-ground survey of the Tract (the "**Tract Survey**") and shall provide a copy of the Tract Survey to City. The Tract Survey shall be certified to City, Purchaser and the Title Company. The Tract Survey must conform to the current Texas Surveyors Association Standards and Specification Category 1A, Condition II Survey and must be acceptable in form and substance to the Title Company, City and Purchaser prior to being deemed finalized.

B. **Title Policy.**

The Purchaser shall acquire a title commitment and title policy from the Title Company as follows:

(1) A title commitment (the "**Tract Title Commitment**") covering the Tract, binding the Title Company to issue to Purchaser a Texas Owner's Policy of Title Insurance on the standard form of policy prescribed by the Texas Department of Insurance in the full amount of the Tract Purchase Price (the "**Tract Title Policy**"),

(2) At Closing, Purchaser shall instruct the Title Company to issue the Tract Title Policy to Purchaser pursuant to the Tract Title Commitment, subject to the Tract Permitted Exceptions (as hereinafter defined) within a reasonable period after Closing and, at Closing, the Title Company must be irrevocably committed to issue such Tract Title Policy. Purchaser hereby authorizes the Title Company to provide City with a photocopy of the Tract Title Policy after Closing, and this authorization shall survive Closing.

C. **Title Review Period.**

Purchaser shall have ten (10) days after the receipt of the Tract Title Commitment, and the Tract Title Exception Documents to review such documents and to deliver in writing to City such objections as Purchaser may have to any matters contained in the Tract Survey, the Tract Title Commitment and the Tract Title Exception Documents (the "Tract Title Review Period"). Any item or matter shown on the Tract Survey and/or the Tract Title Commitment to which Purchaser does not timely object, or to which Purchaser objects and City does not cure on before the expiration of the Tract Inspection Period (as hereinafter defined), shall be deemed "Tract Permitted Exceptions." The standard title policy exceptions (as may be amended by title endorsements or additional coverages requested by Purchaser) and the lien for any taxes not due and payable at the time of Closing shall also be deemed Tract Permitted Exceptions. City may, at its sole election, attempt to cure Purchaser's timely objections within the earlier of: (i) ten (10) business days after City receives the objections; or (ii) five (5) business days prior to the Closing Date (the "Tract Title Cure Period"). City shall not be required to expend any funds to cure Purchaser's objections and any failure by the City to cure Purchaser's objections shall not be a default of the City. If City fails to cure Purchaser's objections by the end of the Tract Title Cure Period, Purchaser may as its exclusive remedy either (i) waive such objections and proceed to Closing; or (ii) terminate this Agreement by written notice to City, which written notice shall be delivered by Purchaser to City on or before the receipt of the Improvement Entitlements as defined by the Contract. If Purchaser terminates this Agreement pursuant to this Section 6(C), the Tract Earnest Money, less the Tract Independent Consideration, will be refunded to Purchaser and neither Party hereto shall have any further rights or obligations under this Agreement except for those that expressly survive the termination of this Agreement. In the event Purchaser fails to timely notify City of Purchaser's election to terminate as provided in this Section 6(C), Purchaser shall be deemed to have waived all uncured title objections to the Tract, the Tract Survey, the Tract Title Commitment and the Tract Exception Documents and all uncured title objections shall be deemed Tract Permitted Exceptions.

7. **Inspection and Seller Ownership Documents.**

A. **Tract Inspection.**

Purchaser shall have the right to enter on and inspect the Tract from the Effective Date until 5:00 p.m. central time on the date that is sixty (60) days after the Effective Date (the "**Tract Inspection Period**"). Purchaser may perform, or have performed on Purchaser's behalf, such noninvasive tests, engineering reports, surveys, soils and other studies as Purchaser may determine in Purchaser's sole discretion (subject to Purchaser's indemnification and restoration obligations as set forth below). Notwithstanding the foregoing, Purchaser shall not conduct invasive testing without City's prior written consent which consent shall not be unreasonably withheld. Before Purchaser, or its surveyors, engineers, consultants, representatives and agents (collectively "**Purchaser's**

Consultants") enter the Tract, Purchaser shall provide evidence to City of Purchaser's insurance policies and Purchaser's Consultants' insurance policies covering personal injury and property damage claims resulting from Purchaser's and/or Purchaser's Consultants' entry on or about the Tract, which insurance shall be subject to approval by the City which shall not be unreasonably withheld. All such insurance policies shall be issued by insurance companies licensed in the State of Texas, shall provide coverage of not less than One Million Dollars (\$1,000,000.00) per occurrence, and shall name City as an additional insured. Purchaser shall provide City with copies of all surveys, soils tests, geotechnical studies, and other environmental tests, studies and reports excluding any internal work product (collectively, "**Purchaser's Studies**") obtained or generated by Purchaser or Purchaser's Consultants in connection with its investigation of the Tract; provided, however, Purchaser will not make any representations or warranties to City as to the accuracy or correctness of Purchaser's Studies. Should Purchaser determine for any reason whatsoever that it does not want to purchase the Tract, Purchaser shall have the right in Purchaser's sole discretion to terminate this Agreement by providing written notice thereof to City before the expiration of the Tract Inspection Period, whereupon the Tract Earnest Money, less the Tract Independent Consideration, shall be refunded to Purchaser, this Agreement shall terminate, and neither Party shall have any further rights or obligations under this Agreement except for those provisions hereof which expressly survive termination of this Agreement. If Purchaser does not terminate this Agreement by written notice before the expiration of the Tract Inspection Period, then (i) it shall be deemed that Purchaser is satisfied with the Tract and the results of its inspections (subject to and without waiving the express obligations of City set forth in this Agreement), (ii) this Agreement shall remain and continue in full force and effect, and (iii) the Tract Earnest Money shall be non-refundable to Purchaser except in the event of a default hereunder by City and Purchaser's resulting termination of this Agreement due to such City default.

B. Purchaser's Restoration Obligation.

PURCHASER AGREES TO DEFEND, INDEMNIFY, SAVE AND HOLD CITY HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, SUITS, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND COURT COSTS) INCURRED OR SUSTAINED BY CITY ARISING FROM OR IN CONNECTION WITH PURCHASER'S INSPECTION OF THE TRACT OR ANY ENTRY ONTO THE TRACT BY PURCHASER AND/OR PURCHASER'S CONSULTANTS, EXCEPT TO THE EXTENT OF CITY'S OWN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; PROVIDED, HOWEVER, IN NO EVENT SHALL PURCHASER BE LIABLE FOR THE MERE DISCOVERY OF PRE-EXISTING CONDITIONS AT THE TRACT. In the event that Purchaser elects to terminate this Agreement for any reason permitted in this Agreement, or if Closing does not occur, Purchaser agrees to (i) restore the Tract, at Purchaser's sole cost and expense, to substantially the same state and condition existing prior to the activities thereon of Purchaser and/or Purchaser's Consultants, and (ii) provide City, without representation or warranty, with a copy of all of Purchaser's Studies which have not theretofore been provided to City. Until Closing, Purchaser agrees to maintain in confidence the information discovered in any reports relating to the Tract unless Purchaser is required by law to make any disclosures thereof; provided, however, Purchaser may disclose such information to Purchaser's lenders, investors, attorneys, consultants and other similar professional advisors who have a need to know such information. Such portion of the Tract Earnest Money as is required to be returned to Purchaser pursuant to the terms of this Agreement shall not be returned to Purchaser unless and until Purchaser has complied with the terms of (i) and (ii) set forth above in this Section 7(B). Notwithstanding anything to the contrary contained in this Agreement, the provisions of this Section 7(B) shall prevail over all other terms and provisions of this Agreement which may conflict herewith, and the provisions of this Section 7(B) shall survive Closing or any termination of this Agreement for any reason.

C. Seller Ownership Documents. Within ten (10) business days after the Effective

Date, Seller shall deliver to Purchaser copies of each of the items listed below, only to the extent the Seller has actual knowledge of each item and already has possession of said items (the “**Ownership Documents**”):

- (1) a copy of all of the environmental assessments, studies, and reports furnished to or obtained by or on behalf of Seller,
- (2) any and all written leases or other agreements pursuant to which any portion of the Property is used or occupied by anyone other than Seller and a complete description of all oral leases or other agreements pursuant to which any portion of the Property is used or occupied by anyone other than Seller, and
- (3) any and all other agreements, documents, and instruments of any nature relating to or affecting the Property and the operation thereof.

The Purchaser expressly agrees that any Ownership Documents provided by the Seller are for convenience only. The Purchaser further agrees that they are not entering into this Agreement or the Contract based on reliance on the Ownership Documents or lack thereof. Furthermore, Purchaser agrees that the Ownership Documents and their contents do not constitute any representations or warranties by the Seller.

In the event that Purchaser determines any the of the Ownership Documents are not acceptable, then Purchaser may terminate this Agreement by written notice to Sellers on or before the end of the Inspection Period in compliance with this Agreement.

8. Closing Documents and Escrow.

A. City’s Deliveries at Closing.

At the Closing, provided Purchaser fulfills its obligations under this Agreement, the City shall deliver to Purchaser: (i) a Special Warranty Deed containing the legal description of the Tract reflected on the final Tract Survey approved by City, Purchaser and the Title Company, which deed shall be in the form attached hereto as **Exhibit C** and made a part hereof for all purposes, subject to the Tract Permitted Exceptions (the “**Tract Deed**”); (ii) a Non-Foreign Affidavit complying with Section 1445 of the Internal Revenue Code; and (iii) all notices, statements, certificates, affidavits and other documents reasonably required by the Title Company or by law to issue the Tract Title Policy and/or to consummate the transactions contemplated in this Agreement.

B. Purchaser’s Obligation to Close.

Purchaser’s obligation to close and consummate purchase of the Property is conditioned on City’s compliance with and satisfaction of all terms of this Agreement for which City is obligated.

C. Seller’s Obligation to Close.

Seller’s obligation to close and consummate sell of the Property is conditioned on Purchaser’s compliance with and satisfaction of all terms of this Agreement.

9. Escrow.

If this Agreement closes, the Tract Earnest Money will be applied first to Purchaser’s closing costs relating to Tract with any remainder to be applied to the Tract Purchase Price. If this Agreement does not close and

either Party makes written demand for the Tract Earnest Money, Escrow Agent will provide a copy of the demand to the other Party by certified mail, return receipt requested, addressed to the other Party at the address set forth in Section 15 of this Agreement. If the Escrow Agent does not receive written objection to the demand from the other Party within ten (10) calendar days, Escrow Agent may disburse the Tract Earnest Money to the Party making the demand. If Escrow Agent complies with this Section 9(A), each Party hereby releases Escrow Agent from all claims relating to the disbursal of the Tract Earnest Money.

10. Disclaimer of Representations and Warranties; Release; Waiver, Covenants and Agreements; Representations and Warranties.

A. DISCLAIMER OF REPRESENTATIONS AND WARRANTIES.

CITY MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED OR ARISING BY OPERATION OF LAW OR OTHERWISE WITH RESPECT TO ANY MATTER CONCERNING THE TRACT, INCLUDING, WITHOUT LIMITATION, THE FOLLOWING: (I) TITLE TO THE TRACT; (II) THE HABITABILITY, MARKETABILITY, MERCHANTABILITY, OR SUITABILITY OR FITNESS OF THE TRACT FOR A PARTICULAR PURPOSE OR USE; (III) THE NATURE AND CONDITION OF THE TRACT INCLUDING, WITHOUT LIMITATION, WATER, DRAINAGE AND GRADING, SOIL AND GEOLOGY, ZONING, ANNEXATION, EXTRATERRITORIAL JURISDICTION AND OTHER ZONING AND JURISDICTIONAL ISSUES, LOCATION OF CEMETERIES, UTILITY AVAILABILITY OR HOOK-UP, EASEMENT RIGHTS, FLOOD PLAINS (OR PORTIONS OF THE TRACT IN A FLOOD PLAIN) AND THE COSTS AND REQUIREMENTS OF SAME, ACCESS TO STREETS, COSTS OF UTILITIES, LOCATION OF CURB CUTS AND MEDIAN BREAKS IN STREETS, SEWAGE FACILITIES (INCLUDING, WITHOUT LIMITATION, AVAILABILITY OR NON-AVAILABILITY OF APPROPRIATE WATER AND SEWER CAPACITY) OR OTHER GOVERNMENTAL RIGHTS OR OBLIGATIONS; (IV) THE COMPLETENESS, ACCURACY OR APPROVAL OF PERMITS, SURVEYS, PLATS, PRELIMINARY PLATS, POLLUTION ABATEMENT PLANS, SUBDIVISION PLANS OR REPORTS CONCERNING THE TRACT; (V) TAX CONSEQUENCES; (VI) THE COMPLIANCE OF ALL OR ANY PART OF THE TRACT WITH APPLICABLE ENVIRONMENTAL LAWS, RULES OR REGULATIONS WITH RESPECT TO HEALTH, THE ENVIRONMENT, AND ENDANGERED SPECIES AND WETLANDS (COLLECTIVELY, "ENVIRONMENTAL LAWS") INCLUDING, WITHOUT LIMITATION, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE COMPENSATION AND LIABILITY ACT OF 1980 (42 U.S.C. §9601, ET. SEQ.), AS AMENDED, THE RESOURCE CONSERVATION AND RECOVERY ACT OF 1976 (42 U.S.C. §6901, ET. SEQ.), AS AMENDED, THE ENDANGERED SPECIES ACT (16 U.S.C. §1531, ET SEQ.), AS AMENDED, THE TEXAS WATER CODE, AS AMENDED, THE TEXAS NATURAL RESOURCE CODE, AS AMENDED, THE TEXAS SOLID WASTE DISPOSAL ACT, AS AMENDED, AND ALL OTHER FEDERAL, STATE AND LOCAL LAWS, STATUTES, ORDINANCES, RULES AND REGULATIONS, AS AMENDED, THAT REGULATE THE USE, STORAGE, TREATMENT, GENERATION, DISPOSAL, TRANSPORTATION, DISCHARGE, RELEASE, THREATENED RELEASE AND/OR REMEDIATION OF HAZARDOUS WASTES, HAZARDOUS MATERIALS, HAZARDOUS SUBSTANCES, POLLUTANTS, TOXIC WASTE, TOXIC MATERIALS AND TOXIC SUBSTANCES; (VII) THE EXISTENCE OF ASBESTOS, OIL, ARSENIC, PETROLEUM OR CHEMICAL LIQUIDS OR SOLIDS, LIQUID OR GASEOUS PRODUCTS OR HAZARDOUS SUBSTANCES AS THOSE TERMS AND SIMILAR TERMS ARE DEFINED OR USED IN APPLICABLE ENVIRONMENTAL LAWS; (VIII) THE NATURE AND EXTENT OF ACCESS TO RIGHTS-OF-WAY OR UTILITIES, AVAILABILITY OF PERMITS TO ACCESS RIGHTS-OF-WAY OR UTILITIES ON THE TRACT, OTHER PROPERTY OWNED BY CITY (IF ANY), OR ANY LAND OWNED BY

THIRD PARTIES; (IX) EASEMENTS, MINERAL INTERESTS, ENCUMBRANCES, LICENSES, RESERVATIONS, CONDITIONS OR OTHER SIMILAR MATTERS AFFECTING THE TRACT; (X) COMPLIANCE WITH ANY LAW, ORDINANCE OR REGULATION OF ANY GOVERNMENTAL ENTITY OR BODY; AND/OR (XI) CLAIMS, DEMANDS, OR OTHER MATTERS RELATING TO ANY RESTRICTIVE COVENANTS ENCUMBERING THE TRACT. THE PARTIES AGREE THE SALE OF THE TRACT WILL BE MADE ON AN "AS IS, WHERE IS" AND "WITH ALL FAULTS" BASIS. THE PARTIES AGREE THE WARRANTIES AND COVENANTS SET FORTH IN SECTION 5.023 OF THE TEXAS PROPERTY CODE DO NOT APPLY TO THIS TRANSACTION AND THAT ANY WARRANTIES ARISING AT COMMON LAW OR IMPLIED AS A RESULT OF SECTION 5.023 OF THE TEXAS PROPERTY CODE, AS AMENDED, OR ANY SUCCESSOR STATUTE, SHALL BE EXCLUDED AND EXCEPTED FROM THE TRACT DEED. PURCHASER ACKNOWLEDGES THAT PURCHASER HAS THE FULL, COMPLETE AND UNFETTERED RIGHT TO INSPECT THE TRACT TO PURCHASER'S SATISFACTION AND THAT THE TRACT PURCHASE PRICE IS IN PART BASED UPON THE FACT THAT THE SALE OF THE TRACT BY THE CITY TO PURCHASER SHALL BE WITHOUT WARRANTY OR REPRESENTATION. PURCHASER AGREES TO RELY ONLY UPON PURCHASER'S OWN INVESTIGATIONS, ASSESSMENTS AND INSPECTIONS AS TO THE CONDITION OF THE TRACT, OR PURCHASER'S OWN DECISION NOT TO INSPECT ANY MATTER AND PURCHASER AGREES THAT IT IS NOT RELYING ON ANY REPRESENTATION, WARRANTY, STATEMENT OR NON-ASSERTION OF CITY OR CITY'S OFFICERS, AGENTS, REPRESENTATIVES, EMPLOYEES, CONSULTANTS, OR INDEPENDENT CONTRACTORS IN MAKING PURCHASER'S DECISION TO PURCHASE THE TRACT.

B. Release.

CITY SHALL NOT BE LIABLE TO PURCHASER FOR ANY LATENT OR PATENT DEFECTS OF THE TRACT OR FOR ANY ERRORS, OMISSIONS, OR ON ACCOUNT OF ANY OTHER CONDITION AFFECTING THE TRACT INCLUDING, BUT NOT LIMITED TO, THOSE MATTERS DESCRIBED IN SECTION 10(A)(I) THROUGH AND INCLUDING SECTION 10(A)(XI) ABOVE, AND PURCHASER, AND ANYONE CLAIMING BY, THROUGH OR UNDER PURCHASER, HEREBY FULLY RELEASES CITY AND CITY'S EMPLOYEES, OFFICERS, ELECTED OFFICIALS, AGENTS, REPRESENTATIVES, ATTORNEYS AND INSURERS (EACH A "CITY RELATED PARTY") FROM ANY AND ALL CLAIMS AGAINST CITY AND EACH CITY RELATED PARTY FOR ANY COST, LOSS, LIABILITY, DAMAGE, EXPENSE, DEMAND, ACTION OR CAUSE OF ACTION (INCLUDING, WITHOUT LIMITATION, ANY RIGHTS OF CONTRIBUTION) ARISING FROM OR RELATED TO ANY LATENT OR PATENT DEFECTS OF THE TRACT OR FOR ANY ERRORS, OMISSIONS, OR OTHER CONDITIONS AFFECTING THE TRACT, INCLUDING, BUT NOT LIMITED TO, THOSE MATTERS DESCRIBED IN SECTION 10(A)(I) THROUGH AND INCLUDING SECTION 10(A)(XI) ABOVE AND ANY ALLEGED NEGLIGENCE OF CITY OR ANY CITY RELATED PARTY. THIS COVENANT RELEASING CITY AND EACH CITY RELATED PARTY SHALL BE SET FORTH IN THE TRACT DEED AS A COVENANT RUNNING WITH THE TRACT PROPERTY AND SHALL BE BINDING UPON PURCHASER, PURCHASER'S SUCCESSORS AND ASSIGNS, AND ALL FUTURE OWNERS OF ALL OR ANY PORTION OF THE TRACT.

C. Waiver.

PURCHASER HEREBY WAIVES PURCHASER'S RIGHTS UNDER THE DECEPTIVE TRADE PRACTICES - CONSUMER PROTECTION ACT, SECTION 17.41 ET. SEQ.,

BUSINESS AND COMMERCE CODE, A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS. AFTER CONSULTATION WITH AN ATTORNEY OF PURCHASER'S OWN SELECTION, PURCHASER VOLUNTARILY CONSENTS TO THIS WAIVER.

D. Covenant and Agreement of Purchaser.

Purchaser represents and warrants to City that Purchaser is acquiring the Tract for investment, has knowledge and experience in financial and business real estate matters that enable Purchaser to evaluate the merits and risks of the transactions herein contemplated, and has bargained for and obtained a purchase price and agreement terms which make the limitations of Purchaser's recourse against City acceptable. Purchaser acknowledges that the limitations of Purchaser's recourse against City as set forth herein is a material part of the consideration for the execution and delivery of the Tract Deed by the City and is an integral part of the basis of the bargain between the City and Purchaser relating to the sale by the City and the purchase by Purchaser of the Tract.

E. Covenant and Agreement of City.

City hereby covenants and agrees that, within ten (10) days after obtaining actual knowledge thereof (specifically excluding any constructive knowledge), City shall notify Purchaser in writing of the pendency or the institution of foreclosure proceedings or any proceedings for the condemnation of the Tract, or any portion thereof, and any other proceedings alleging injury or damage to, or violations with respect to, the Tract, or any portion thereof, of which City receives actual notice of during the term of this Agreement. For the purposes of this Section 10E, the term "actual knowledge" of the City shall mean the actual knowledge of the City Manager.

F. Survival.

The provisions of this Section 10 shall be set forth in the Tract Deed. The waivers, releases, disclaimers and other matters set forth in this Section 10 and all obligations of the Parties pursuant to this Section 10 shall survive Closing or any termination of this Agreement.

11. Default and Remedies.

A. Purchaser's Default and City's Remedies.

In the event Purchaser fails to fulfill any of its obligations hereunder, except as a result of City's default hereunder or the termination of this Agreement by Purchaser pursuant to any provision hereof giving Purchaser the right to terminate this Agreement, City shall have the right, as City's exclusive remedies: (i) to terminate this Agreement, in which event the Tract Earnest Money shall be delivered to City and neither Party shall thereafter have any further rights, obligations or liabilities hereunder except for those that expressly survive the termination of this Agreement; and (ii) the right to sue Purchaser for damages arising from (A) Purchaser's restoration obligations set forth in Section 7(B) herein, (B) Purchaser's agreement to indemnify, defend and hold City harmless pursuant to Section 7(B), and (C) any other provision of this Agreement that expressly survives Closing or the termination of this Agreement. In this regard, the Parties agree that the Tract Earnest Money shall constitute agreed upon liquidated damages for any default by Purchaser under this Agreement. The provisions of this Section 12(A) shall expressly survive the termination of this Agreement.

B. City's Default and Purchaser's Remedies.

In the event City fails to fulfill any of its obligations hereunder, except as a result of Purchaser's default hereunder or the termination of this Agreement by City pursuant to any provision hereof

giving City the right to terminate this Agreement, Purchaser shall have the right, as Purchaser's exclusive remedies: to either: (i) waive the enforcement of the applicable provision(s) and purchase the Property notwithstanding such default pursuant to the remaining terms and provisions of this Agreement and the Contract; or (ii) terminate this Agreement in which event neither Party shall thereafter have any further rights, obligations or liabilities hereunder except for those that expressly survive the termination of this Agreement; and any other provision of this Agreement that expressly survives Closing or the termination of this Agreement. The provisions of this Section 12(B) shall expressly survive the termination of this Agreement.

C. Waiver of Consequential, Punitive, Exemplary and Speculative Damages.

THE PARTIES 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, ALL RIGHTS TO SUE THE OTHER PARTY FOR CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR SPECULATIVE DAMAGES. THE PROVISIONS OF THIS SECTION 12(C) SHALL EXPRESSLY SURVIVE THE CLOSING OR TERMINATION OF THIS AGREEMENT.

D. Notice and Opportunity to Cure.

City and Purchaser covenant and agree, each with the other, to give to the other written notice of any default occurring, and such Party in default shall have a period of thirty (30) days to cure such default prior to the exercise of any right or remedy provided in this Agreement by the non-defaulting Party **provided, however,** notwithstanding the foregoing: (i) neither Party shall be required to notify the other Party to close this Agreement on the Closing Date and in the event a Party fails to close this Agreement on the Closing Date, such Party shall not have any cure period within which to cure such default; and (ii) City shall not be required to notify Purchaser to deposit the Tract Earnest Money and City may terminate this Agreement if Purchaser fails to timely deposit the Tract Earnest Money as required by this Agreement.

12. Possession.

City will deliver possession of the Tract to Purchaser upon closing and funding of the sale of the Tract in its present condition, ordinary wear and tear excepted, subject to the Tract Permitted Exceptions.

13. Taxes.

Taxes for the year of Closing for the Tract will be prorated and Purchaser shall be responsible for all taxes for the Tract from and after the Closing Date.

If the Purchaser provides Seller with sufficient proof that the agreed upon changes in the Contract regarding the use of the Property shall result in the imposition of a rollback tax, then Purchaser shall have the option to either: (i) pay such rollback tax and waive any claims against the Seller related to such rollback tax or (ii) terminate this Agreement prior to or on the date of receipt of the Improvement Entitlements by Purchaser. The provisions of this Section 13 shall expressly survive Closing.

14. Notices.

Any notice or communication required or permitted hereunder shall be in writing and shall be deemed to be delivered, (i) upon e-mail transmission addressed to the intended recipient at the e-mail address set forth below with copy of such communication sent concurrently to the receiving party by other means of delivery as set forth in this paragraph, (ii) whether actually received or not, on the date deposited in the United States mail, postage fully prepaid, registered or certified mail, addressed to the intended recipient at the address

set forth below, or (iii) when received via local hand courier service, or (iv) the next business day after deposit by the sender with a national service such as Federal Express or United Parcel Service. Any address for notice may be changed by written notice delivered as provided herein.

If Intended for City:

City of Mesquite, a Texas home rule municipality
Attention: Cliff Keheley, City Manager
1515 N. Galloway
Mesquite, Texas 75149
Email: ckeheley@cityofmesquite.com
With a copy to:

City of Mesquite, a Texas home rule municipality
Attention: David Paschall, City Attorney
1515 N. Galloway
Mesquite, Texas 75149
Email: dpaschall@cityofmesquite.com

With a copy to:

City of Mesquite, a Texas home rule municipality
Attention: Paula Anderson, Deputy City Attorney
1515 N. Galloway
Mesquite, Texas 75149
Email: panderson@cityofmesquite.com

If Intended for Purchaser:

Kodiak Capital Partners, LLC
435 East U.S. Highway 80
Sunnyvale, Texas 75182
Attn: Christopher Brown
Email: chris@fencesupplyinc.com

With copy to:
Kevin W. Green
Kevin W. Green, P.C.
1221 West Campbell Road, Suite 193
Richardson, Texas 75080
Email: kgreen@kwglaw.com

15. Applicable Law.

This Agreement shall be construed in accordance with the laws of the State of Texas. Venue shall be in Dallas County, Texas.

16. Entire Agreement.

This Agreement and all attached exhibits shall constitute the entire agreement between City and Purchaser and shall supersede any other written or oral agreements between City and Purchaser relating to the matters set forth herein. This Agreement may be modified only in writing signed by City and Purchaser.

17. Broker's Commission.

City and Purchaser both acknowledge and represent to the other that there are no brokers entitled to a commission in connection with the sale and purchase of the Tract.

18. Effective Date.

If the City and Purchaser execute this Agreement on the same date, any reference to the "Effective Date" or the "date of this Agreement" shall mean the date this Agreement is executed by both the City and Purchaser. If the City and Purchaser execute this Agreement on different dates, any reference to "Effective Date" or the "date of this Agreement" shall refer to the later of the two dates this Agreement is executed by the City and Purchaser.

19. Date for Performance.

If the last day to perform under a provision of this Agreement falls on a Saturday, Sunday or legal holiday, the time for performance shall be automatically extended through the close of business on the next regularly scheduled business day.

20. Attorneys' Fees.

Each Party hereto shall pay their own attorney's fees in connection with the negotiation and consummation of the transactions contemplated herein. If either Party shall be required to employ an attorney to enforce or defend the rights of such Party hereunder, the prevailing party shall not be entitled to recover reasonable attorney's fees incurred in connection therewith. The provisions of this Section shall survive the Closing or earlier termination of this Agreement.

21. Severability.

If any term or provision of this Agreement shall be held to be invalid or unenforceable, the remaining provisions of this Agreement shall not be affected thereby and shall remain valid and enforceable.

22. Captions.

The section captions herein are for reference purposes only and are not a part of this Agreement and in no way define, describe, extend, or limit the scope or intent of this Agreement.

23. Counterparts.

This Agreement may be executed in any number of original or electronically scanned counterparts, each of which shall be considered an original and all of which shall be considered one and the same instrument. This Agreement, the closing documents and all transactions contemplated herein shall be subject to the Texas Uniform Electronic Transactions Act.

24. Assignment.

Neither Party may assign this Agreement without the prior written consent of the other Party which may be withheld in the sole discretion of the Party's whose consent is required.

25. Waivers.

No failure by either Party to insist upon the strict, timely performance of any covenant or agreement of this Agreement or failure to exercise any right or remedy upon a breach thereof shall constitute a waiver of such breach, right or remedy.

26. Authority.

Purchaser 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. Purchaser represents that Purchaser has the full power and authority to enter into and fulfill Purchaser's obligations under this Agreement and that the person signing this Agreement on behalf of Purchaser has the authority to sign this Agreement on behalf of Purchaser. City represents that the City has the full power and authority to enter into and fulfill the City's obligations under this Agreement and that the person signing this Agreement on behalf of the City has the authority to sign this Agreement on behalf of the City. The provisions of this Section 27 shall expressly survive the Closing.

27. Abstract or Title Policy.

Purchaser should have an abstract covering the Tract examined by an attorney of Purchaser's selection, or Purchaser should obtain a title policy for the Tract.

28. Statutory Tax Districts.

If the Tract is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49, Texas Water Code, requires City to deliver and Purchaser to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fees of the district before final execution of this Agreement.

29. Immunity.

The Parties agree that this is not a contract for goods and services. The Parties further agree that City does not waive or surrender any of its governmental powers, immunities or rights and, notwithstanding any provision of this Agreement, this Agreement does not control, waive, limit or supplant the legislative authority or discretion of the City Council of the City. The provisions of this Section 30 shall expressly survive the Closing or any termination of this Agreement and in the event of any conflict between this provision and any other provision of this Agreement, this Section 30 shall control.

30. Form 1295 Certificate.

In the event this Agreement is subject to V.T.C.A., Government Code, §2252.908, Purchaser agrees to comply with V.T.C.A., Government Code, §2252.908 by going online with the Texas Ethics Commission to complete a Form 1295 Certificate and by printing, executing and delivering the completed certificate in such form as is required by V.T.C.A., Government Code, §2252.908 and the rules of the Texas Ethics Commission and providing to the City, at the time of delivery of an executed counterpart of this Agreement, a duly executed completed Form 1295 Certificate.

31. Anti-Boycott Verification.

To the extent required by law, Purchaser hereby verifies that it and its parent company, wholly-or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and, to the extent this Agreement is construed to be a contract for goods or services, will not boycott Israel during the term of this Agreement. The foregoing verification is made solely to comply with Section 2271.002, Texas Government Code, but only to the extent such section is applicable, and to the extent such Section does not contravene applicable Federal law. As used in the foregoing verification, 'boycott Israel' means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. Purchaser understands 'affiliate' to mean an entity that controls, is controlled by, or is under common control with Purchaser and exists to make a profit.

32. Iran, Sudan and Foreign Terrorist Organizations.

To the extent required by law, Purchaser represents that neither it nor any of its parent company, wholly-or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer’s internet website: <https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>, <https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>, or <https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>. The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal law and excludes Purchaser and each of its parent company, wholly-or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. Purchaser understands “affiliate” to mean any entity that controls, is controlled by, or is under common control with Purchaser and exists to make a profit.

33. Time is of the Essence.

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

34. Operation Prior to Closing.

From the Effective Date of this Agreement to the Closing Date, neither Party shall execute any contracts, leases or other agreements or encumbrances affecting the Tract, as applicable, that would be binding on the other Party following the Closing, without the written consent of the other Party, which consent may be withheld for any reason or no reason.

IN WITNESS WHEREOF, the City and Purchaser have executed this Agreement on the date(s) set forth below.

CITY OF MESQUITE,
A Texas home rule municipality

By: _____

Name: Cliff Keheley

Title: City Manager

Execution Date: _____, 2021

ATTEST:

Sonja Land
City Secretary

APPROVED AS TO FORM:
David L. Paschall
City Attorney

By: _____
Stephanie Neal
Assistant City Attorney

Kodiak Capital Partners, LLC,
A Texas limited liability company

By: _____

Name: _____

Title: Authorized Representative

Executed the _____ day of _____,
2021.

ESCROW RECEIPT

The undersigned Title Company hereby acknowledges receipt of a fully executed copy (or executed counterparts) of the foregoing Agreement on the date below and accepts the obligations of the Title Company as set forth in the foregoing Agreement.

By: _____

Name: _____

Title: Escrow Agent

Date: _____, 2021

Title Company Address:

_____ Street
_____ Texas _____

Telephone: _____

Email: _____

EXHIBIT A

Legal Description and Depiction of the Tract

EXHIBIT "A"

BEING a tract of land out of the D.S. CARVER SURVEY, Abstract No. 342, City of Mesquite, Dallas County, Texas and being more particularly described as follows:

BEGINNING at a 50d nail found in the North right-of-way of Military Parkway (variable width right-of-way) and being the Southeast corner of a tract of land conveyed to the City of Mesquite by deed recorded in Volume 85201, Page 1632 and 1636, Deed Records, Dallas County, Texas;

THENCE North 00 degrees 07 minutes West along the East line of said City of Mesquite tract and continuing along the East line of a tract of land conveyed to First State Bank by deed recorded in Volume 91088, Page 4082, Deed Records, Dallas County, Texas for a total distance of 365.10 feet to a 1/2 inch iron rod set for corner, said point being in the South right-of-way of Scyene Road (variable width right-of-way);

THENCE Easterly along the South right-of-way of Scyene Road, in a curve to the left with a radius of 5779.65 feet and a central angle of 02 degrees 17 minutes an arc distance of 230.33 feet to a 1/2 inch iron rod found for corner (chord bears South 80 degrees 09 minutes East at 230.31 feet) said point being the Northwest corner of a tract of land conveyed to Gospel Tabernacle;

THENCE South 00 degrees 52 minutes West along the West line of said Tabernacle tract and continuing along the West line of a tract of land conveyed to First State Bank for a total distance of 339.78 feet to a 1/2 inch iron rod set for corner, said point being in the North right-of-way of Military Parkway;

THENCE North 86 degrees 22 minutes West along the North right-of-way of Military Parkway a distance of 221.50 feet to the PLACE OF BEGINNING and containing 78,812 square feet or 1.8093 acres of land.

EXHIBIT C

Form of Deed

SPECIAL WARRANTY DEED

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF DALLAS §

THAT, the City of Mesquite, a Texas home rule municipality ("**Grantor**"), for and in consideration of 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, paid to Grantor by Kodiak Capital Partners, LLC, a Texas limited liability company having an address at _____ ("**Grantee**"), has GRANTED and by these presents does hereby GRANT unto Grantee, all of Grantor's right, title and interest, if any, in and to _____ acre tract of land situated in the _____ Survey, Abstract No. _____, City of Mesquite, Dallas County, Texas, and being more particularly described and depicted in **Exhibit A** attached hereto and made a part hereof for all purposes (the "**Property**"), together with all of Grantor's rights, titles, powers, privileges, licenses and interests, if any, appurtenant to the Property but specifically not including any easements, rights-of-way or interests in any streets, highways or roadways in front of, abutting or adjacent to the Property.

This deed is expressly made subject to those certain encumbrances, easements and other matters more particularly described on **Exhibit B** attached hereto and incorporated herein by reference (the "**Permitted Exceptions**"), but only to the extent that such Permitted Exceptions are valid, subsisting and, in fact, affect the Property.

SUBJECT, HOWEVER, TO taxes and assessments for the year 2021 and subsequent years and subsequent assessments, by acceptance of this deed, Grantee assumes the obligation for payment of such taxes and assessments; and

SUBJECT MOREOVER, TO the matters set forth in **Exhibit B** attached hereto and incorporated herein by reference (hereinafter collectively referred to as the "**Permitted Exceptions**");

TO HAVE AND TO HOLD the Property, subject to the aforesaid taxes, assessments and Permitted Exceptions, unto Grantee, Grantee's successors and assigns, forever; and Grantor does hereby bind Grantor and Grantor's successors to WARRANT AND FOREVER DEFEND the Property, subject to the aforesaid taxes, assessments and Permitted Exceptions, unto Grantee, Grantee's successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under Grantor, but not otherwise.

GRANTOR MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED OR ARISING BY OPERATION OF LAW WITH RESPECT TO ANY MATTER CONCERNING THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE FOLLOWING: (i) TITLE (OTHER THAN THE SPECIAL WARRANTY OF TITLE IN THIS DEED), (ii) HABITABILITY, MERCHANTABILITY OR SUITABILITY OR FITNESS OF THE PROPERTY FOR A PARTICULAR PURPOSE OR USE, (iii) THE NATURE AND CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, WATER, DRAINAGE AND GRADING, SOIL AND GEOLOGY, ZONING, ANNEXATION, EXTRATERRITORIAL JURISDICTION AND OTHER ZONING AND JURISDICTIONAL ISSUES, LOCATION OF CEMETERIES, UTILITY AVAILABILITY OR HOOK-UP, EASEMENT RIGHTS, FLOOD PLAINS (OR PORTIONS OF THE PROPERTY IN A FLOOD PLAIN) AND THE COSTS AND REQUIREMENTS OF SAME, ACCESS TO STREETS, COSTS OF UTILITIES, LOCATION OF CURB CUTS AND MEDIAN BREAKS IN STREETS, SEWAGE FACILITIES (INCLUDING, WITHOUT LIMITATION, AVAILABILITY OR NONAVAILABILITY OF APPROPRIATE WATER AND SEWER CAPACITY) OR OTHER GOVERNMENTAL RIGHTS OR OBLIGATIONS, (iv) COMPLETENESS, ACCURACY OR APPROVAL OF PERMITS, SURVEYS, PLATS, PRELIMINARY PLATS, POLLUTION ABATEMENT PLANS, SUBDIVISION PLANS OR REPORTS CONCERNING THE PROPERTY, (v) TAX CONSEQUENCES, (vi) COMPLIANCE OF ALL OR ANY PART OF THE PROPERTY WITH APPLICABLE ENVIRONMENTAL LAWS, RULES OR REGULATIONS WITH RESPECT TO HEALTH, THE ENVIRONMENT, ENDANGERED SPECIES AND WETLANDS (COLLECTIVELY, "ENVIRONMENTAL LAWS") INCLUDING, WITHOUT LIMITATION, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE COMPENSATION AND LIABILITY ACT OF 1980, AS AMENDED, THE RESOURCE CONSERVATION AND RECOVERY ACT OF 1976, AS AMENDED, THE ENDANGERED SPECIES ACT (16 U.S.C. §1531, ET SEQ.), AS AMENDED, THE TEXAS WATER CODE, AS AMENDED, THE TEXAS NATURAL RESOURCE CODE, AS AMENDED, AND THE TEXAS SOLID WASTE DISPOSAL ACT, AS AMENDED, AS AMENDED, THE TEXAS WATER CODE, AS AMENDED, THE TEXAS NATURAL RESOURCE CODE, AS AMENDED, THE TEXAS SOLID WASTE DISPOSAL ACT, AS AMENDED, AND ALL OTHER FEDERAL, STATE AND LOCAL LAWS, STATUTES, ORDINANCES, RULES AND REGULATIONS, AS AMENDED, THAT REGULATE THE USE, STORAGE, TREATMENT, GENERATION, DISPOSAL, TRANSPORTATION, DISCHARGE, RELEASE, THREATENED RELEASE AND/OR REMEDIATION OF HAZARDOUS WASTES, HAZARDOUS MATERIALS, HAZARDOUS SUBSTANCES, POLLUTANTS, TOXIC WASTE, TOXIC MATERIALS AND TOXIC SUBSTANCES; (vi) THE EXISTENCE OF ASBESTOS, OIL, ARSENIC, PETROLEUM OR CHEMICAL LIQUIDS OR SOLIDS, LIQUID OR GASEOUS PRODUCTS OR HAZARDOUS SUBSTANCES AS THOSE TERMS AND SIMILAR TERMS ARE DEFINED OR USED IN APPLICABLE ENVIRONMENTAL LAWS; (vii) THE EXISTENCE OF ASBESTOS, OIL, ARSENIC, PETROLEUM OR CHEMICAL LIQUIDS OR SOLIDS, LIQUID OR GASEOUS PRODUCTS OR HAZARDOUS SUBSTANCES AS THOSE TERMS AND SIMILAR TERMS ARE DEFINED OR USED IN APPLICABLE ENVIRONMENTAL LAWS, (viii) NATURE AND EXTENT OF ACCESS TO RIGHTS-OF-WAY OR UTILITIES, AVAILABILITY OF PERMITS TO ACCESS RIGHTS-OF-WAY OR UTILITIES ON THE PROPERTY, OTHER PROPERTY OWNED BY GRANTOR (IF ANY), OR LAND OWNED BY THIRD PARTIES; RIGHTS-OF-WAY, LEASES, ENCUMBRANCES,

LICENSES, RESERVATIONS, CONDITIONS OR OTHER SIMILAR MATTERS, (ix) COMPLIANCE WITH ANY LAW, ORDINANCE OR REGULATION OF ANY GOVERNMENTAL ENTITY OR BODY, OR (x) PROPERTY OWNER CLAIMS OR CLAIMS, DEMANDS, OR OTHER MATTERS BY, AGAINST OR WITH RESPECT TO ANY PROPERTY OWNERS ASSOCIATION OR RELATING TO ANY RESTRICTIVE COVENANTS ENCUMBERING THE PROPERTY. SALE OF THE PROPERTY IS MADE ON AN "AS IS, WHERE IS" AND "WITH ALL FAULTS" BASIS, AND THE WARRANTIES AND COVENANTS SET FORTH IN SECTION 5.023 OF THE TEXAS PROPERTY CODE DO NOT APPLY TO THIS CONVEYANCE. GRANTEE ACKNOWLEDGES THAT GRANTEE HAS HAD THE FULL, COMPLETE AND UNFETTERED RIGHT TO INSPECT THE PROPERTY TO GRANTEE'S SATISFACTION AND THAT THE PURCHASE PRICE PAID FOR THE PROPERTY WAS IN PART BASED UPON THE FACT THAT THIS CONVEYANCE WAS MADE BY GRANTOR WITHOUT WARRANTY OR REPRESENTATION (EXCEPT THE SPECIAL WARRANTY OF TITLE). BY ACCEPTANCE OF THIS DEED, GRANTEE ACKNOWLEDGES THAT GRANTEE HAS RELIED ONLY UPON GRANTEE'S OWN INSPECTIONS AS TO THE CONDITION OF THE PROPERTY, OR ITS OWN DECISION NOT TO INSPECT ANY MATTER. IN ADDITION, BY ACCEPTANCE OF THIS DEED, GRANTEE AND ANYONE CLAIMING BY, THROUGH OR UNDER GRANTEE, HEREBY FULLY RELEASES GRANTOR, GRANTOR'S PARTNERS, EMPLOYEES, OFFICERS, DIRECTORS, REPRESENTATIVES, TRUSTEES, BENEFICIARIES, ATTORNEYS AND AGENTS FROM ANY AND ALL CLAIMS AGAINST ANY OF THEM FOR ANY COST, LOSS, LIABILITY, DAMAGE, EXPENSE, DEMAND, ACTION OR CAUSE OF ACTION (INCLUDING, WITHOUT LIMITATION, THE RIGHT OF CONTRIBUTION) ARISING FROM OR RELATED TO ANY CONSTRUCTION DEFECTS, ERRORS, OMISSIONS OR OTHER CONDITIONS WHATSOEVER AFFECTING THE PROPERTY, INCLUDING, BUT NOT LIMITED TO CLAUSES (i) THROUGH (x) SET FORTH ABOVE AND ANY ALLEGED NEGLIGENCE OF GRANTOR. THIS COVENANT RELEASING GRANTOR SHALL BE A COVENANT RUNNING WITH THE PROPERTY.

TO HAVE AND TO HOLD the Property (subject to the foregoing) unto Grantee and Grantee's successors and assigns forever.

EXECUTED to be effective as of the ____ day of _____, 20 ____.

GRANTOR:

CITY OF MESQUITE,
a Texas home rule municipality

By: _____
Name: Cliff Keheley
Title: City Manager

STATE OF TEXAS §
 §

COUNTY OF DALLAS §

Before me, the undersigned officer, on this day personally appeared Cliff Keheley, City Manager of the City of Mesquite, a Texas home rule municipality, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office this ____ day of _____, 20 ____.

Notary Public, In and for the State of Texas

Notary Seal

AFTER RECORDING, SEND TO:
Kodiak Capital Partners, LLC

SEND TAX NOTICES TO:
Kodiak Capital Partners, LLC

_____, TX
Attn: _____

_____, TX
Attn: _____

Exhibit A – Legal Description
Exhibit B – Permitted Exceptions

Exhibit A

Legal Description and Depiction of the Property

EXHIBIT "A"

BEING a tract of land out of the D.S. CARVER SURVEY, Abstract No. 342, City of Mesquite, Dallas County, Texas and being more particularly described as follows:

BEGINNING at a 50d nail found in the North right-of-way of Military Parkway (variable width right-of-way) and being the Southeast corner of a tract of land conveyed to the City of Mesquite by deed recorded in Volume 85201, Page 1632 and 1636, Deed Records, Dallas County, Texas;

THENCE North 00 degrees 07 minutes West along the East line of said City of Mesquite tract and continuing along the East line of a tract of land conveyed to First State Bank by deed recorded in Volume 91068, Page 4082, Deed Records, Dallas County, Texas for a total distance of 365.10 feet to a 1/2 inch iron rod set for corner, said point being in the South right-of-way of Scyene Road (variable width right-of-way);

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Exhibit B

Permitted Exceptions

(to be completed at time of purchase agreement and deed execution)