

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A PROGRAM TO PROMOTE LOCAL ECONOMIC DEVELOPMENT AND STIMULATE BUSINESS AND COMMERCIAL ACTIVITY IN THE CITY; AUTHORIZING THE CITY MANAGER TO FINALIZE AND EXECUTE AN AGREEMENT FOR SUCH PURPOSES WITH ELEMENTS INTERNATIONAL GROUP, LLC, AND IDIL SKYLINE D, LLC, FOR THE PROPOSED RELOCATION OF THE HEADQUARTERS OF ELEMENTS INTERNATIONAL GROUP, LLC, TO A NEW INDUSTRIAL BUILDING IN THE SKYLINE INDUSTRIAL DISTRICT LOCATED AT 2250 SKYLINE DRIVE, MESQUITE, TEXAS; AND AUTHORIZING THE CITY MANAGER TO ADMINISTER THE AGREEMENT ON BEHALF OF THE CITY.

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

WHEREAS, IDIL SKYLINE D, LLC ("IDIL"), is the owner of a newly constructed industrial building in the Skyline Industrial District consisting of approximately 487,200 square feet located at 2250 Skyline Drive, Mesquite, Texas (the "Building"); and

WHEREAS, the City Council was presented with a proposed agreement between the City, Elements International Group, LLC (the "Company"), and IDIL providing economic development incentives to the Company to relocate the Company's headquarters to the Building, a copy of said agreement being attached hereto as Exhibit "A" and incorporated herein by reference (the "Agreement"); and

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

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

SECTION 1. That the City Council finds that the terms of the proposed Agreement by and between the City, the Company and IDIL, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference, will benefit the City and will accomplish the public purpose of promoting local economic development and stimulating business and commercial activity in the City in accordance with Section 380.001 of the Texas Local Government Code.

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

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

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

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

SECTION 6. 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.

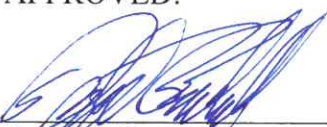
DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 18th day of March 2019.

Stan Pickett
Mayor

ATTEST:

APPROVED:

Sonja Land
City Secretary



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"), Elements International Group, LLC, a Texas limited liability company (the "Company") and IDIL SKYLINE D, LLC, a Delaware limited liability company (the "Landlord").

WITNESSETH:

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

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

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

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

WHEREAS, the Company is a global leader in furniture manufacturing and distribution (the "Company's Business"); and

WHEREAS, the Company has decided to relocate its world headquarters to the Mesquite Facility; and

WHEREAS, the Company has committed to employ and maintain at least fifty (50) Employees at the Mesquite Facility during the Incentive Period; and

WHEREAS, the relocation of the Company to the Mesquite Facility will result in the addition of leasehold improvements to the Building, resulting in an increase in the taxable value of the Building and an increase in the ad valorem real property taxes assessed and collected by the City; and

WHEREAS, the commitment by the Company to employ and maintain at least fifty (50) Employees at the Mesquite Facility during the Incentive Period will result in the creation and retention of employment opportunities in the City; and

WHEREAS, it is anticipated that the Company will own tangible Business Personal Property in the amount of at least EIGHT MILLION AND NO/100 DOLLARS (\$8,000,000.00) to be used in the operation of the Company's Business at the Mesquite Facility, resulting in an increase in the taxable value of tangible Business Personal Property located at the Mesquite Facility and an increase in the ad valorem business personal property taxes assessed and collected by the City; and

WHEREAS, the Company has advised the City that a principal factor inducing the Company to relocate to the Mesquite Facility and to agree to employ and maintain at least fifty (50) Employees at the Mesquite Facility during the Incentive Period is the agreement by the City to provide the Economic Development Incentives (as hereinafter defined) to the Company under the terms and conditions more fully set forth in this Agreement; and

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

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

WHEREAS, the City Council finds and determines that this Agreement will effectuate the purposes set forth in the Program, and that the Company's performance of its obligations herein will promote local economic development in the City, increase employment opportunities in the City, stimulate business and commercial activity in the City, increase the amount of Ad Valorem Taxes assessed and collected by 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:

"Ad Valorem Taxes" shall mean those real property and tangible personal property taxes authorized, adopted, imposed or collected by or on behalf of the City pursuant to §11.01 of the Texas Tax Code, as amended or replaced.

"Additional Conditions Precedent for Extended Term" shall have the meaning set forth in Article VII – Part B of this Agreement.

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

"Base Tax Year" shall mean the period beginning with January 1, 2018, and continuing until and including December 31, 2018.

"Base Year Taxes" shall mean the total amount of Ad Valorem Taxes assessed and collected by the City against the Land for the Base Tax Year.

"Building" shall have the meaning set forth in the Recitals to this Agreement.

"Business Personal Property" shall mean moveable items of personal property owned by the Company and used in the Company's ordinary course of business which are located at the Mesquite Facility but are not permanently affixed to, or part of, the Land or Building and shall consist of machinery, equipment, rack shelving, furniture, computers, vehicles [but only if such vehicles are licensed and registered in Dallas County, Texas], and Taxable Inventory provided such items, other than Taxable Inventory, are considered capital assets under generally accepted accounting principles.

"Certificate of Compliance" shall mean a certificate in such form as is reasonably acceptable to the City executed on behalf of the Company by a duly authorized Company Representative certifying to the City: (i) that all Conditions Precedent have been satisfied and are then continuing; and (ii) that no Company Default 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" shall mean a final certificate of occupancy issued by the City to the Company authorizing the Company to occupy one hundred percent (100%) of the Building.

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

"City Default" shall have the meaning set forth in Article IX, Section 2 of this Agreement.

"Company" shall mean Elements International Group, LLC, a Texas limited liability company, its successors and assigns only as permitted by Article X, Section 1 of this Agreement.

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

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

“Company Representative” shall mean the Chief Executive Officer, Chief Financial Officer or any other duly authorized officer of the Company acting on behalf of the Company.

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

“DCAD” shall mean Dallas Central Appraisal District.

“Economic Covenants” shall be those Company representations, covenants, agreements and requirements set forth in Article VI of this Agreement.

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

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

“Employee” shall mean a full-time, direct employee of the Company, working a minimum of thirty-two (32) hours per week, who shall be employed in a position physically based at the Mesquite Facility. Employee shall not include Company’s part time employees or employees of Company’s subcontractors or vendors, whether working at the Mesquite Facility or otherwise. “Employee” shall include any replacement of a former Employee whose employment is terminated for any reason, with such original Employee and any replacement employee counting as one (1) Employee for purposes of the calculations in this Agreement. “Employee” shall also mean employees transferred to the Mesquite Facility from the Company’s locations other the Mesquite Facility.

“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.

“Extended Term” shall mean the period commencing January 1, 2028, and continuing thereafter until and including the earlier of: (i) December 31, 2029; or (ii) the date this Agreement is terminated by the City or the Company pursuant to a right to terminate as expressly provided herein provided the Additional Conditions Precedent for Extended Term have been satisfied.

“Incentive Payment” and “Incentive Payments” shall mean economic development incentive(s) to be paid by the City to the Company pursuant to the terms and subject to the conditions and limitations set forth in this Agreement to provide economic development grants to the Company for the Incentive Period measured by a percentage of the Ad Valorem Taxes assessed and collected by the City against the Land, Building and Business Personal Property during the Incentive Period.

“Incentive Period” shall mean the period commencing with the Effective Date of this Agreement and continuing until the earlier of: (i) December 31, 2026; or (ii) the date this Agreement is terminated by the City or the Company pursuant to a right to terminate more fully set forth herein, provided, however, in the event the Company timely satisfies all of the Additional Conditions Precedent to Extended Term set forth in Article VII – Part B of this Agreement, the Incentive Period shall be extended to include the period commencing with January 1, 2027, and continuing thereafter until the earlier of: (i) December 31, 2028; or (ii) the date this Agreement is terminated by the City or the Company pursuant to a right to terminate more fully set forth herein.

“Incentive Tax Year” shall mean the period consisting of three hundred and sixty five (365) calendar days [or three hundred and sixty six (366) calendar days for any calendar year that is a leap year] beginning on January 1, 2019, and ending on December 31, 2019, and continuing on January 1st and ending on December 31st of each calendar year thereafter during the Incentive Period.

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

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

“Landlord” shall mean IDIL SKYLINE D, LLC, a Delaware limited liability company, its successors and assigns only as permitted by Article X, Section 1 of this Agreement.

“Lease” shall mean that certain Lease Agreement executed by the Company and the Landlord relating to the right and obligation of the Company to occupy the Building consisting of a primary term commencing no later than March 31, 2019, and continuing until and including December 31, 2026, and containing at least one (1) option to extend the term of the lease for the period commencing January 1, 2027, and continuing thereafter until and including December 31, 2028.

“Lease Extension” shall have the meaning set forth in Article VII – Part B, Section 1 of the Agreement.

“Lease Requirement” shall have the meaning set forth in Article VI, Section 1 of 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 in this Agreement.

“Parties” shall mean the Company, the Landlord and the City.

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

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

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

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

“Taxable Inventory” shall mean taxable merchandise and supplies owned by the Company and located at the Mesquite Facility and shall include raw materials, work-in-process and finished goods but shall specifically exclude goods in transit, freeport goods and merchandise, supplies, materials or other goods that are non-taxable.

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

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

ARTICLE III

Authority for Agreement

This Agreement is authorized by Article III, Section 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code. The City Council finds and determines that this Agreement will effectuate the purposes set forth in the Program and that the Company's performance of its obligations herein will increase the amount of Ad Valorem Taxes assessed and collected by the City, result in employment opportunities being created and maintained in the City, promote local economic development in the City, stimulate business and commercial activity in the City, and 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) December 31, 2027; or (ii) the date this Agreement is terminated by the City or the Company pursuant to a right to terminate as expressly provided herein provided, however, in the event the Company timely satisfies all of the Additional Conditions Precedent for Extended Term set forth in Article VII – Part B of this Agreement, the term of this Agreement shall be extended to include the additional period from January 1, 2028, and continuing thereafter until the earlier of: (i) December 31, 2029; or (ii) the date this Agreement is terminated by the City or the Company pursuant to a right to terminate more fully set forth herein (the "Term").

ARTICLE V

Company's Covenant Not to Employ Undocumented Workers

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

2. Covenant to Notify City of Conviction for Undocumented Workers. The Company further hereby covenants and agrees to provide the City with written notice of any conviction of the Company, or any branch, division or department of the Company, of a violation under 8 U.S.C. §1324a (f) within thirty (30) days from the date of such conviction.

3. Repayment of Economic Development Incentives in Event of Conviction for Employing Undocumented Workers. If, after receiving any Economic Development Incentive under the terms of this Agreement, the Company, or a branch, division or department of the Company, is convicted of a violation under 8 U.S.C. §1324a (f), the Company shall pay to the City, not later than the 120th day after the date the City notifies the Company of the violation, an amount equal to the total Economic Development Incentives previously paid by the City to the Company under the terms of this Agreement plus interest at the rate equal to the *lesser* of: (i) the Maximum Lawful Rate; or (ii) five percent (5%) per annum, such interest rate to be calculated on the amount of each Economic Development Incentive being recaptured from the date each Economic Development Incentive was paid by the City to the Company until the date repaid by the Company to the City and such interest rate shall adjust periodically as of the date of any change in the Maximum Lawful Rate.

4. Limitation on Economic Development Incentives. The City shall have no obligation to pay any Economic Development Incentives to the Company if the Company, or any branch, division or department of the Company is convicted of a violation under 8 U.S.C. §1324a (f).

5. Remedies. The City shall have the right to exercise all remedies available by law to collect any sums due by the Company to the City pursuant to this Article V including, without limitation, all remedies available pursuant to Chapter 2264 of the Texas Government Code, provided, however, the Parties agree that the Landlord shall not have any liability for the failure of the Company to comply with Article V of this Agreement.

6. Limitation. Neither the Company or the Landlord is liable for a violation of Article V of this Agreement by a subsidiary, affiliate, or franchisee of the Company, or by a person with whom the Company contracts.

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

ARTICLE VI

Company's Economic Covenants

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

1. Lease of Mesquite Facility. The Company shall lease one hundred percent (100%) of the Building for a primary term commencing no later than March 31, 2019, and terminating no earlier than December 31, 2026, with an option to extend the term of the lease for the period commencing January 1, 2027, and continuing thereafter until and including December 31, 2028 (the "Lease Requirement");

2. Copy of Lease. The Company shall deliver to the City a copy of the written lease satisfying the Lease Requirement executed by both the Company and the Landlord on or before March 31, 2019;

3. Certificate of Occupancy. The Company shall obtain a Certificate of Occupancy for the Building on or before March 31, 2019, and shall commence operations of the Company's Business at the Mesquite Facility on or before March 31, 2019;

4. Required Jobs. The Company shall employ at least fifty (50) Employees who conduct their job duties at the Mesquite Facility on or before March 31, 2019, and will maintain at least fifty (50) Employees at all times thereafter during the Term of this Agreement;

5. Valuation of Business Personal Property. The valuation of the Business Personal Property at the Mesquite Facility shall be at least EIGHT MILLION AND NO/100 DOLLARS (\$8,000,000.00) as of January 1, 2020 and as of January 1st of each Incentive Tax Year thereafter during the Term of this Agreement;

6. Valuation of Land and Building. The valuation of the Land and Building shall be at least FOURTEEN MILLION AND NO/100 DOLLARS (\$14,000,000.00) for each Incentive Tax Year during the Term of this Agreement;

7. Records and Reports. The Company shall deliver to the City within sixty (60) days after written request, copies of such records and documentation as the City may reasonably request to confirm compliance by the Company with the representations, covenants and agreements set forth in this Article VI;

8. Inspection. The Company shall provide the City, its agents and employees with access to the Mesquite Facility at such times as the City may reasonably request to conduct such inspections as the City deems necessary in order to confirm compliance by the Company with the representations, covenants and agreements of the Company as set forth in this Agreement provided the City has given the Company at least seventy-two (72) hours prior written notice of such inspection;

9. Representative of Company to Accompany Inspections. The Company shall provide a representative of the Company to accompany the City during all inspections of the Mesquite Facility conducted by the City pursuant to Article VI, Section 8 above;

10. Timely Payment of Taxes. The Company shall timely pay all Ad Valorem Taxes assessed against the tangible personal property located at the Mesquite Facility during the Term of this Agreement (including, without limitation, Business Personal Property) prior to the date such taxes become delinquent and shall reimburse Landlord for 100% of Ad Valorem Taxes assessed against the Land and Building paid by Landlord to the City during the Term of this Agreement;

11. Maintenance Obligations. The Company shall comply with all applicable building codes, zoning ordinances and all other codes, ordinances and regulations of the City applicable to the Mesquite Facility at all times

during the Term of this Agreement and shall, at the Company's sole cost and expense, maintain the Building in good repair during the Term of this Agreement;

12. Compliance with Laws. The Company shall comply with all applicable federal, state and local laws, ordinances and regulations during the Term of this Agreement;

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

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

ARTICLE VII – PART A

Conditions Precedent to Payment of Economic Development Incentives

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

1. Payment Request. The Company shall have submitted a Payment Request to the City no earlier than January 30th and no later than April 15th of the calendar year following the Incentive Tax Year for which the Payment Request is being made requesting payment of the Economic Development Incentive then due by the City to the Company pursuant to the terms of this Agreement. For example, the first such Payment Request shall be submitted no earlier than January 30, 2020, and no later than April 15, 2020, for the Economic Development Incentive for the first Incentive Tax Year, and subsequent Payment Requests shall be submitted no earlier than January 30th and no later than April 15th of each calendar year thereafter during the Incentive Period. Each Payment Request shall be accompanied by a Certificate of Compliance dated effective as of the date of the Payment Request and, as of the date of the Payment Request, all other Conditions Precedent set forth herein shall have been satisfied and are then continuing;

2. Payment of Fees. The Company or the Landlord shall have timely paid to the City all permit, development, review and inspection fees due and payable to the City in connection with the construction of the Mesquite Facility;

3. Lease of Mesquite Facility. The Company shall have satisfied the Lease Requirement and shall have provided the City with copies of the written lease executed by the Company and the Landlord satisfying the Lease Requirement;

4. Certificate of Occupancy. The Company shall have obtained a Certificate of Occupancy for the Building on or before March 31, 2019, and shall have commenced operations of the Company's Business at the Mesquite Facility on or before March 31, 2019;

5. Required Jobs. The Company shall have employed at least fifty (50) Employees who conduct their job duties at the Mesquite Facility on or before March 31, 2019, and shall have maintained at least fifty (50) Employees at all times thereafter up to and including the date of the Payment Request;

6. Taxable Valuation of Business Personal Property. For the Incentive Tax Year commencing January 1, 2020 and each Incentive Tax Year thereafter during the Term of this Agreement, the time for any protest, challenge or appeal of the taxable valuation of the Business Personal Property for the Incentive Tax Year for which the Payment Request is being requested has passed; or, if the Company, or any Person acting on behalf of the Company, has filed a protest, challenge or appeal of the appraised valuation of the Business Personal Property for the Incentive Tax Year commencing January 1, 2020 or for any Incentive Tax Year thereafter during the Term of this Agreement, a final, non-appealable administrative order or judicial decision shall have been entered determining the fair market value of the Business Personal Property for such Incentive Tax Year to be an amount equal to or greater than EIGHT MILLION AND NO/100 DOLLARS (\$8,000,000.00);

7. Payment of Business Personal Property Ad Valorem Taxes. The Company shall have timely paid the Ad Valorem Taxes assessed against the Business Personal Property at the Mesquite Facility based on a valuation of at least EIGHT MILLION AND NO/100 DOLLARS (\$8,000,000.00) for the Incentive Tax Year for which the Payment Request is being requested;

8. Taxable Valuation of Land and Building. The time for any protest, challenge or appeal of the taxable valuation of the Land and Building for the Incentive Tax Year for which the Payment Request is being requested has passed; or, for any Incentive Tax Year in which the Company, the Landlord, or any Person acting on behalf of the Company or the Landlord, has filed a protest, challenge or appeal of the appraised valuation of the Land and Building, a final, non-appealable administrative order or judicial decision shall have been entered determining the fair market value of the Land and Building for such Incentive Tax Year to be an amount equal to or greater than FOURTEEN MILLION AND NO/100 DOLLARS (\$14,000,000.00);

9. Payment of Real Property Ad Valorem Taxes. The Landlord shall have timely paid the Ad Valorem Taxes assessed against the Land and Building based on a valuation of at least FOURTEEN MILLION AND NO/100 DOLLARS (\$14,000,000.00) for the Incentive Tax Year for which the Payment Request is being requested, the Company shall have reimbursed the Landlord for such Ad Valorem Taxes and the Company shall have provided evidence reasonably satisfactory to the City that the Company has reimbursed the Landlord for such Ad Valorem Taxes;

10. Maintenance Obligations. The Building shall, as of the date of the Payment Request, be in compliance with all applicable building codes, zoning ordinances and all other codes, ordinances and regulations of the City applicable to the Mesquite Facility;

11. Records and Reports. The Company shall have delivered to the City copies of such records and such other documentation as the City may reasonably request to confirm compliance by the Company with the Economic Covenants and the Conditions Precedent;

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

13. Performance of other Agreements. The Company shall have timely kept and performed all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by the Company under the terms of all other agreement(s) now and hereafter existing between the Company and the City and no default shall then exist under the terms of such agreement(s) and no event shall exist which, but for notice, the lapse of time, or both, would constitute a default by the Company under the terms of such agreement(s); and

14. No Conviction for Undocumented Workers. As of the date of the Payment Request, and at all times during the Term of this Agreement prior to the Payment Request, the Company shall not have been convicted by a court of competent jurisdiction of knowingly employing Undocumented Workers to work for the Company at the Mesquite Facility or at any other branch, division or department of the Company.

ARTICLE VII – Part B

Additional Conditions Precedent for Extended Term

The Company, the Landlord and the City hereby expressly acknowledge and agree that the City's obligation to pay any Economic Development Incentives to the Company under the terms of this Agreement during the Extended Term shall be conditioned upon: (i) the satisfaction of all of the Conditions Precedent set forth in Article VII – Part A of this Agreement during the Extended Term; and (ii) the satisfaction by the Company of the following additional conditions precedent (collectively the "Additional Conditions Precedent for Extended Term"), to-wit:

1. Extension of Lease Term. On or before January 1, 2027, the Company shall have extended the term of the Lease in writing for the period commencing January 1, 2027, and continuing thereafter until and including December 31, 2028 (the "Lease Extension");

2. Copy of Lease Extension. The Company shall have provided a copy of the Lease Extension to the City on or before January 1, 2027; and

3. Confirmation of Lease Extension by Landlord. The Company shall have provided to the City on or before January 1, 2027, a written confirmation signed by the then owner of the Mesquite Facility acknowledging that the Lease has been extended for the period commencing January 1, 2027, and continuing thereafter until and including December 31, 2028 (such confirmation may take the form of a copy of a written amendment to the Lease executed by the Landlord and the Company that acknowledges the occurrence of the extension).

ARTICLE VIII

Economic Development Incentives

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

Incentive Tax Year	Percentage
2019, 2020 and 2021	80%
2022, 2023, 2024 and 2025	70%
2026	60%

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

Incentive Tax Year	Percentage
2027 and 2028	60%

3. Other Taxing Entities. The Parties acknowledge and agree that ad valorem taxes assessed or collected against the Land, Building and Business Personal Property by the Mesquite Independent School District, the County of Dallas and/or any other taxing entity other than the City shall not be included in determining the amount of any Economic Development Incentive payable under the terms of this Agreement.

4. Agreement Regarding Protest, Challenge or Appeal of Property Valuations. The Company represents to the City that, under the terms of the Lease, the Company is required to reimburse the Landlord for Ad Valorem Taxes assessed against the Land and Building paid by the Landlord to the City during the Term of this Agreement. The Company acknowledges that a material consideration for the City’s agreement to enter into this Agreement and to pay the Economic Development Incentives set forth herein is the City’s expectation that the taxable valuation of the Land and Building for each Incentive Tax Year during the Term of this Agreement will be at least FOURTEEN MILLION AND NO/100 DOLLARS (\$14,000,000.00) and that the taxable valuation of the Business Personal Property at the Mesquite Facility for the Incentive Tax Year commencing January 1, 2020 and each Incentive Tax Year thereafter during the Term of this Agreement will be at least EIGHT MILLION AND NO/100 DOLLARS (\$8,000,000.00) resulting in substantially increased ad valorem tax revenue for the City. The Company or the Landlord may protest, challenge or appeal the taxable value of the Land, Building and Business Personal Property as appraised by DCAD for any Incentive Tax Year during the Term of this Agreement provided, however, in consideration of the City’s agreement to enter into this Agreement and grant the Economic Development Incentives under the terms and conditions set forth herein, the Parties agree that if such protest, challenge or appeal results in a reduction in the valuation of the Land and Building for such Incentive Tax Year to an amount less than FOURTEEN MILLION AND NO/100 DOLLARS (\$14,000,000.00) and/or if such protest, challenge or appeal for the Incentive Tax Year commencing January 1, 2020 or any Incentive Tax Year thereafter during the Term of this Agreement results in a reduction in the valuation of the Business Personal Property at the Mesquite Facility for such Incentive Tax Year

to an amount less than EIGHT MILLION AND NO/100 DOLLARS (\$8,000,000.00), no Incentive Payment will be due or payable by the City to the Company for that Incentive Tax Year.

5. Payment of Economic Development Incentives for the Initial Term. Provided all Conditions Precedent set forth in Article VII – Part A and the Economic Covenants set forth in Article VI have been satisfied and are then continuing, the economic development grants set forth in Article VIII, Section 1 above shall be payable by the City to the Company in annual payments (referred to herein as “Incentive Payments”) on the later of: (i) June 1st of the calendar year following the Incentive Tax Year for which the Incentive Payment is payable; or (ii) sixty (60) days after all Conditions Precedent to the payment of such Incentive Payment including, without limitation, the Conditions Precedent set forth in Article VII – Part A, Sections 6, 7, 8 and 9 have been satisfied. Any Incentive Payment delayed as a result of the filing of a tax protest, challenge or appeal shall no longer be due and payable in the event that: (i) the fair market value of the Land and Building for such Incentive Tax Year is reduced to an amount less than FOURTEEN MILLION AND NO/100 DOLLARS (\$14,000,000.00); or (ii) for the Incentive Tax Year commencing January 1, 2020 or any Incentive Tax Year thereafter during the Term of this Agreement, the fair market value of the Business Personal Property for such Incentive Tax Year is reduced to an amount less than EIGHT MILLION AND NO/100 DOLLARS (\$8,000,000.00).

6. Payment of Economic Development Incentives for the Extended Term. Provided all Conditions Precedent set forth in Article VII – Part A, the Additional Conditions Precedent for Extended Term set forth in Article VII – Part B and the Economic Covenants set forth in Article VI have been satisfied and are then continuing, the economic development grants set forth in Article VIII, Section 2 above shall be payable by the City to the Company in annual Incentive Payments on the later of: (i) June 1st of the calendar year following the Incentive Tax Year for which the Incentive Payment is payable; or (ii) sixty (60) days after all Additional Conditions Precedent for Extended Term set forth in Article VII – Part B have been satisfied and all Conditions Precedent set forth in Article VII – Part A have been satisfied including, without limitation, the Conditions Precedent set forth in Article VII – Part A, Sections 6, 7, 8 and 9. Any Incentive Payment delayed as a result of the filing of a tax protest, challenge or appeal shall no longer be due and payable in the event that: (i) the fair market value of the Land and Building for such Incentive Tax Year is reduced to an amount less than FOURTEEN MILLION AND NO/100 DOLLARS (\$14,000,000.00); or (ii) the fair market value of the Business Personal Property for such Incentive Tax Year is reduced to an amount less than EIGHT MILLION AND NO/100 DOLLARS (\$8,000,000.00).

7. Funds Available for Payment of Economic Development Incentives. The grants of Economic Development Incentives payable by the City to the Company as more fully set forth in this Agreement are not secured by a pledge of Ad Valorem Taxes or financed by the issuance of any bonds or other obligations payable from Ad Valorem Taxes of the City. All Economic Development Incentives 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 Chapter 380. Each Incentive Payment shall be subject to the City’s appropriation of funds for such purpose to be paid in the budget year for which the Incentive Payment is to be made. The provisions of this Article VIII, Section 7 shall expressly survive the expiration or termination of this Agreement.

ARTICLE IX

Defaults Recapture of Incentives Remedies

1. Company Default. The Company shall be in default of this Agreement (a “Company Default”): (i) upon the occurrence of an Event of Bankruptcy or Insolvency of the Company; or (ii) if the Company fails to timely keep or perform any term, provision, agreement, covenant, condition or obligation to be kept or performed by the Company under the terms of this Agreement and such failure continues for sixty (60) days after written notice by the City; or (iii) if the Landlord fails to timely pay any Ad Valorem Taxes assessed by the City against the Land and Building and the Landlord or the Company fails to cure such failure within sixty (60) days after written notice by the City to the Company (each a “Company Default”).

2. City Default. The City shall be in default of this Agreement (a “City Default”): (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 the Company (each a “City Default”).

3. Remedies. Upon the occurrence of a Company Default, the City shall have no obligation to pay any future Economic Development Incentive to the Company and the City shall have the right to: (i) recapture the Economic Development Incentives previously paid by the City to the Company pursuant to Article IX, Section 4 below; (ii) terminate this Agreement by written notice to the Company and the Landlord; and (iii) exercise any remedy available to the City pursuant to the laws of the State of Texas, provided, however, the City shall not be entitled to the recovery of attorneys' fees. Upon the occurrence of a City Default, the Company shall have the right to terminate this Agreement by written notice to the City and the Landlord and shall further have the right to exercise any remedy available to the Company pursuant to the laws of the State of Texas, provided, however, the Company shall not be entitled to the recovery of attorneys' fees.

4. Recapture of Economic Development Incentives. In the event of a Company Default, the Company shall pay to the City, within thirty (30) days after written demand by the City, at the City's address set forth in Article X, Section 2 of this Agreement, or such other address as the City may hereafter notify the Company in writing, the amount equal to fifty percent (50%) of the Economic Development Incentives previously paid by the City to the Company under the terms of this Agreement plus interest at the rate equal to the *lesser* of: (i) the Maximum Lawful Rate; or (ii) three percent (3%) per annum, such interest rate to be calculated on each Economic Development Incentive being recaptured from the date such Economic Development Incentive was paid by the City to the Company until the date repaid by the Company to the City and such interest rate shall adjust periodically as of the date of any change in the Maximum Lawful Rate. In the event the Company fails to timely pay any sums due by the Company to the City pursuant to this Article IX, Section 4, the Company shall be in breach of this Agreement and the City shall have the right, without further demand or notice to the Company, to exercise any and/or all rights and/or remedies available to the City pursuant to the laws of the State of Texas including, without limitation, institution of a suit in a court of competent jurisdiction, to collect such sums from the Company.

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

ARTICLE X

Miscellaneous Provisions

1. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their respective successors and permitted assigns provided, however, notwithstanding anything contained herein to the contrary, this Agreement and the rights and obligations of the Company may not be assigned or transferred by the Company to any Person without the prior written consent of the City, which may be withheld in the City's sole discretion. In the event the Company is a corporation or limited liability company, the sale, transfer or assignment of a controlling interest in the shares of the Company or the sale, transfer or assignment of a controlling interest in the membership interests of the Company shall constitute an assignment of this Agreement and the failure of the Company to obtain the prior written consent of the City prior to such sale, transfer or assignment of such shares or membership interests shall be an attempted assignment of this Agreement in violation of this Agreement and shall constitute a breach of this Agreement by the Company. In the event the Company is a partnership, the sale, transfer or assignment of a controlling interest in the shares of a corporation or the membership interests of a limited liability company or the partnership interests of a partnership that is the Company's general or managing partner shall constitute an assignment of this Agreement and the failure of the Company to obtain the prior written consent of the City prior to such sale, transfer or assignment of such shares, membership interests or partnership interests shall be an attempted assignment of this Agreement in violation of this Agreement and shall constitute a breach of this Agreement by the Company. This Agreement may be assigned by the Landlord without the prior written consent of the City provided the Landlord has given the City prior written notice of such assignment and, within thirty (30) days following the occurrence of the assignment, Landlord delivers to the City an assignment and assumption agreement executed by Landlord and such assignee whereby the assignee agrees to be bound by the terms of this Agreement (a "Documented Landlord Assignment"). Upon the occurrence of a Documented Landlord Assignment, the assignee shall be deemed to be the "Landlord" for all purposes hereunder (except that in any event, the non-liability provisions of Article X, Section 5 shall continue to apply with respect to the assigning-entity). Furthermore, neither the Company 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 Company 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. 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 (except in the event of a Documented Landlord Assignment). Any attempted assignment in violation of the terms and provisions of this Agreement shall be void and of no force or effect.

2. Notices. Any notice and/or certificate or statement required or permitted to be given to any Party under the terms of this Agreement shall be in writing and shall be considered properly given if sent by United States electronically tracked certified mail, return receipt requested, in a postage paid envelope addressed to the respective Party at the following addresses or by delivery of the notice in person to the intended addressee by hand delivery or by a nationally recognized courier service having the ability to track shipping and delivery of notices including but not limited to services such as Federal Express or United Parcel Service (UPS). Notices mailed by certified mail as set forth above shall be effective one (1) business day after deposit in the United States mail. Notices sent by a nationally recognized courier service as set forth above shall be effective one (1) business day after deposit with the nationally recognized courier service. Notices given in any other manner shall be effective only if and when received by the addressee. For purposes of notice, the addresses of the Parties shall be as set forth below; provided, however, that any Party shall have the right to change such Party's address for notice purposes by giving the other Party at least thirty (30) days prior written notice of such change of address in the manner set forth herein:

COMPANY:

(a) For purposes of notice, the address of the Company prior to April 1, 2019 shall be as follows:

Elements International Group, LLC
2020 Industrial Blvd
Rockwall, Texas 75087
Attn: Mike Wurster, President
Phone: (877) 575-3888
Facsimile: 972-692-7238
Email: mwurster@elementsgroup.com

With copies to:

Elements International Group, LLC
2020 Industrial Blvd
Rockwall, Texas 75087
Attn: Alex Cihak, Director of Business Analysis
Phone: (877) 575-3888
Facsimile: 972-692-7238
Email: acihak@elementsgroup.com

and

C. Bruce Willis, II
Attorney & Counselor at Law
Musgrove Law Firm P.C.
10,000 N. Central Expressway, Ste. 1000
Dallas, Texas 75231
D: (214) 615-4237
T: (214) 615-4150
F: (214) 615-4151
E: bwillis@musgrovelaw.com

(b) For purposes of notice, the address of the Company on and after April 1, 2019 shall be as follows:

Elements International Group, LLC
2250 Skyline Drive
Mesquite, Texas 75149
Attn: Mike Wurster, President
Email: mwurster@elementsgroup.com

With copies to:

Elements International Group, LLC
2250 Skyline Drive
Mesquite, Texas 75149
Attn: Alex Cihak, Director of Business Analysis
Email: acihak@elementsgroup.com

and

C. Bruce Willis, II
Attorney & Counselor at Law
Musgrove Law Firm P.C.
10,000 N. Central Expressway, Ste. 1000
Dallas, Texas 75231
D: (214) 615-4237
T: (214) 615-4150
F: (214) 615-4151
E: bwillis@musgrovelaw.com

LANDLORD:

IDIL SKYLINE D, LLC
1100 Peachtree Street, Suite 1000
Atlanta, Georgia 30309
Attn: General Counsel
Phone: (404) 479-1618
Email: david.laibstain@idigazeley.com

With a copy to:

IDIL SKYLINE D, LLC
5420 LBJ Freeway, Suite 1275
Dallas, Texas 75240
Phone: (972) 560-7003
Email: david.seaman@idigazeley.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

City Attorney
City of Mesquite
1515 N. Galloway Ave.
Mesquite, Texas 75149

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

4. Remedies Cumulative. Without limiting the provisions of Article X, Section 5, the Parties hereby agree that each right and remedy of the Parties provided for in this Agreement or now or hereafter existing pursuant to the laws of the State of Texas shall be cumulative and concurrent and shall be in addition to every other right or remedy provided for in this Agreement or now or hereafter existing pursuant to the laws of the State of Texas, except that no Party shall be entitled to recover attorneys' fees incurred in connection with enforcing the terms of this Agreement. The provisions of this Article X, Section 4 shall not be deemed to limit Article X, Section 5.

5. (a) No Right or Interest of Landlord. The Landlord expressly acknowledges and agrees that even though the Landlord is paying the Ad Valorem Taxes on the Land and Building to the City, the Economic Development Incentives granted pursuant to this Agreement are being granted solely to the Company to incentivize the Company to move its world headquarters to the City, to occupy and operate the Company's Business from the Mesquite Facility, and to increase employment opportunities in the City. The Landlord consents to the payment of the Economic Development Incentives to the Company and expressly acknowledges and agrees that the Landlord shall not have any right, title or interest in any of the Economic Development Incentives granted herein to the Company.

(b) No Liability of Landlord. The City and the Company expressly acknowledge and agree on behalf of their successors and assigns that Landlord shall not be required to take any action, or assume any obligations under this Agreement and that in no event will Landlord suffer any liability to any Party under this Agreement. The foregoing sentence is not intended to release Landlord from any obligations that Landlord would otherwise have notwithstanding this Agreement, either by virtue of the Lease, any other written agreement between Landlord and the City, or applicable law including, without limitation, the Landlord shall not be released from any obligation to pay Ad Valorem Taxes or any other taxes, fees or fines payable to the City and the Landlord shall not be released from the obligation to comply with all building codes, zoning ordinances and all other codes, ordinances, rules and regulations of the City. Without limiting the foregoing, the Parties expressly acknowledge and agree that in no event whatsoever will Landlord be liable to the City or any other Party or Person for any recapture payment assessed and/or required pursuant to this Agreement.

(c) No Liability of City to Landlord. The Landlord agrees that in no event will the City suffer any liability to the Landlord under this Agreement. The foregoing sentence is not intended to release City from any obligations that it would otherwise have notwithstanding this Agreement, any other written agreement between Landlord and the City, or applicable law.

(d) Survival. The provisions of this Article X, Section 5 shall expressly survive the expiration or termination of this Agreement.

6. Indemnification by the Company. The Company hereby agrees to indemnify and hold harmless Landlord and its successors and assigns from and against (a) any liability, loss, claims and damages and (b) for litigation expenses related to those items listed in (a), as they relate to this Agreement. The provisions of this Article X, Section 6 shall expressly survive the expiration or termination of this Agreement.

7. 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.

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

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

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

11. 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.

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

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

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

19. Authority. The Company represents that it is duly formed, validly existing and in good standing under the laws of the State of its formation and is duly authorized to transact business in the State of Texas. The Company represents that it has the full power and authority to enter into and fulfill its obligations under this Agreement and that the Person signing this Agreement on behalf of the Company has the authority to sign this Agreement on behalf of the Company. The Landlord represents that it is duly formed, validly existing and in good standing under the laws of the State of its formation and is duly authorized to transact business in the State of Texas. The Landlord represents that it has the full power and authority to enter into and fulfill its obligations under this Agreement and that the Person signing this Agreement on behalf of the Landlord has the authority to sign this Agreement on behalf of the Landlord.

20. Usury Savings Clause. The Company and the City intend to conform strictly to all applicable usury laws. All agreements of the City and the Company are hereby limited by the provisions of this Article X, Section 20 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 20 and such document shall be automatically reformed and the interest payable to the City shall be automatically reduced to the Maximum Lawful Rate, without the necessity of execution of any amendment or new document. If the City shall ever receive anything of value which is characterized as interest under applicable law and which would apart from this provision be in excess of the Maximum Lawful Rate, an amount equal to the amount which would have been excessive interest shall at the option of the City be refunded to Company or applied to the reduction of the principal amount owing under this Agreement or such document in the inverse order of its maturity and not to the payment of interest. The right to accelerate any indebtedness does not include the right to accelerate any interest which has not otherwise accrued on the date of such acceleration, and City does not intend to charge or receive any unearned interest in the event of acceleration. All interest paid or agreed to be paid to the City shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full stated term (including any renewal or extension) of such indebtedness so that the amount of interest on account of such indebtedness does not exceed the Maximum Lawful Rate.

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

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

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

24. Execution of Agreement by Parties. If this Agreement is not executed by the Company, the Landlord and the City on or before May 3, 2019, this Agreement will be null and void and of no force or effect.

25. 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:

By: _____
Sonja Land
City Secretary

Date: _____

APPROVED AS TO FORM:

City Attorney or his Designee

CITY:

CITY OF MESQUITE,
a Texas home rule municipality

By: _____
Name: Cliff Keheley
Title: City Manager

Date: _____

COMPANY:

ELEMENTS INTERNATIONAL GROUP, LLC

By: _____
Name: _____
Title: _____

Date: _____

LANDLORD:

IDIL SKYLINE D, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

Date: _____

EXHIBIT "A"
TO
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

Legal Description of Land

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

End of Exhibit
