

## AGREEMENT

This Agreement is entered into by and between the City of Carrollton, Texas, a home rule city and municipal corporation of Dallas County, Texas, duly acting by and through its City Manager, hereinafter referred to as CITY, and MFirm 1, LLC acting by and through Kenneth Mabry, Manager, hereinafter referred to as OWNER.

### WITNESSETH:

WHEREAS, the CITY finds that the administration of a program of grants to OWNER for a limited time in amounts equal to a portion of CITY taxes paid on real property, hereafter referred to as PROGRAM, would promote local economic development and stimulate business and commercial activity within the municipality and would directly establish a public purpose; and,

WHEREAS, the CITY has determined that the said PROGRAM contains sufficient controls to ensure that the above-mentioned public purposes are carried out in all transactions involving the use of public funds and resources in the establishment and administration of the PROGRAM; and,

WHEREAS, V.T.C.A., Local Government Code Chapter 380 provides statutory authority for establishing and administering the said PROGRAM, including making loans and grants of money.

NOW THEREFORE, the parties do mutually agree as follows:

1. From the execution of this AGREEMENT to the end of the AGREEMENT period, City of Carrollton real property taxes shall be payable as follows:
  - a. The real property to be the subject of this AGREEMENT shall be confined to the property at 1825 W. Belt Line Rd., Carrollton, Texas 75006 (as described in the attached property description marked EXHIBIT B), hereinafter referred to as PREMISES.
  - b. BASE YEAR VALUE shall mean the assessed value of the real property on PREMISES on January 1 of the year 2013.
  - c. Real property in this AGREEMENT shall include the value of land and improvements on the PREMISES as defined by the Texas Property Tax Code (V.T.C.A.).
  - d. Value of IMPROVEMENTS shall include value of land and buildings and immovable property on the PREMISES less BASE YEAR VALUE.
  - e. Value of ineligible property shall be fully taxable; additional value of new eligible IMPROVEMENTS shall be fully taxed but used in the calculation of the grant in this PROGRAM; and all real property shall be fully taxed at the end of this AGREEMENT.
  - f. Values shall be the same as the value of such property as determined annually by the Dallas Central Appraisal District, subject to the appeal procedures set forth in the V.T.C.A. Tax Code. Any decrease in value after appeal is subject to recalculation of the appropriate amount of the grant from the City under this AGREEMENT. If the City has already issued the grant to the OWNER based on

the larger value, payment to the CITY by OWNER of such difference shall be remitted within 60 days to CITY after final determination of appeal.

2. Subject to the terms and conditions of this AGREEMENT, and subject to the rights of holders of any outstanding bonds of the CITY, CITY shall make grants pursuant to the PROGRAM to the OWNER in amounts equal to 90% of the City of Carrollton real property taxes assessed and paid upon value of real property for the years 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021 and 2022 less the BASE YEAR VALUE since this incentive is for real property values established after the Base Year 2013. Any increase in real property value after Base Year 2013 will be rebated as described in this section. The CITY shall make such grants in accordance with this AGREEMENT to the OWNER within 60 days of full payment of all taxes by OWNER to the CITY on the PREMISES.

3. The OWNER agrees and covenants that it will diligently and faithfully, in a good and workmanlike manner, make improvements to the PREMISES including but not limited to a corporate headquarters and warehouse operation with a minimum total in excess of 299,550 square feet, which shall be included in the IMPROVEMENTS, in accordance with all applicable state and local laws and regulations or a valid waiver thereof.

4. OWNER shall thereafter, from the date of execution of this AGREEMENT until the expiration of the grant agreement, make such IMPROVEMENTS, including but not limited to \$ 25 million in real property improvements on the PREMISES, and continuously operate, occupy and maintain the PREMISES for the following described purpose, hereinafter referred to as the PURPOSES: corporate headquarters and warehouse facility.

5. In the event that: (1) IMPROVEMENTS described in paragraph 3 of this agreement are not completed and a certificate of occupancy is not issued by CITY for said PREMISES by December 31, 2013; or (2) OWNER allows its real property taxes owed the CITY for the PREMISES to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of any such real property taxes; or (3) OWNER fails to occupy the IMPROVEMENTS for the PURPOSES set forth in paragraph 3 above by December 31, 2013; or (4) OWNER breaches any of the terms or conditions of the AGREEMENT, then the OWNER shall be in default of this AGREEMENT. In the event that the OWNER defaults in its performance of (1), (2), (3), or (4) above, then the CITY shall give the OWNER written notice in accordance with paragraph 9 below of such default. If OWNER has not cured such default or obtained a valid waiver thereof from the appropriate authority within a thirty (30) day period owing to causes beyond the control of the OWNER, this AGREEMENT may be terminated by the CITY. Notice of termination shall be in writing as provided in paragraph 9 below. In the event of termination pursuant to the provisions of the paragraph, the CITY will not make a grant to the OWNER, pursuant to this AGREEMENT, for the calendar year during which the default occurred or any years thereafter, but there shall be no recapture of grants that were issued to OWNER in prior years.

6. The terms and conditions of this AGREEMENT are binding upon the successors and assigns of all parties hereto. This AGREEMENT cannot be assigned by OWNER unless written permission is first granted by the CITY. CITY's consent to assignment of the AGREEMENT to a tenant or

lessee of OWNER, for a grant in the amount of 90% of the City of Carrollton real property taxes assessed and paid by tenant or lessee upon value of real property for the 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021 and 2022 (unless terminated earlier) less the BASE YEAR VALUE shall not be unreasonably withheld, so long as OWNER's lessee or tenant agrees in writing to be bound by all terms and conditions of this AGREEMENT.

7. It is understood and agreed between the parties that the OWNER, in performing its obligations thereunder, is acting independently, and the CITY assumes no responsibilities or liabilities in connection therewith to third parties, and OWNER agrees to indemnify and hold CITY harmless therefrom; it is further understood and agreed among parties that the CITY, in performing its obligations hereunder, is acting independently, and the CITY assumes no responsibilities in connection therewith to third parties.

8. The OWNER further agrees that the CITY, its agents and employees, shall have reasonable rights of access to the PREMISES to inspect the property in order to ensure that the facility is in accordance with all applicable agreements with the CITY, including this AGREEMENT, and all applicable state and local laws and regulations, as well as the continuing right, subject to OWNER's reasonable security requirements, to inspect the PREMISES to ensure that the PREMISES are thereafter maintained, operated, and occupied in accordance with all applicable agreements with the CITY.

9. Notices required to be given to any party to this AGREEMENT shall be in writing and shall be duly served when it shall have been deposited, enclosed in a wrapper with proper postage prepaid thereon, addressed to the party at its address as set forth below, and shall be deemed to have been received three days after the date deposited in the United States Mail:

For CITY by notice to:

City of Carrollton  
Attn: City Manager  
P. O. Box 110535  
Carrollton TX 75011-0535

With copy to:

City Attorney  
P. O. Box 110535  
Carrollton TX 75011-0535

For Owner by notice to:

Kenneth Mabry  
Manager  
MFirm 1, LLC  
1722 Routh Street, Suite 1313  
Dallas, TX 75201

Any party may change the address to which notices are to be sent by giving the other parties written notice in the manner provided in this paragraph.

10. On the first day of February, 2014, and annually thereafter on the first day of February, OWNER shall certify to the CITY its compliance with each applicable term of this AGREEMENT on that date and, if applicable, for the previous year.

11. This AGREEMENT was authorized by action of the City Council, authorizing the City Manager to execute the AGREEMENT on behalf of the CITY. This action by the Council was at a meeting open to the public, and that public notice of the time, place and purpose of said meeting was given, all as required by Texas Open Meetings Act, V.T.C.A. Government Code, and Chapter 551.

12. Under Chapter 2264 of the Texas Local Government Code, OWNER has submitted the required certification that the business, or a branch, division, or department of the business, does not and will not knowingly employ an undocumented worker. An undocumented worker means an individual who, at the time of employment, is not lawfully admitted for permanent residence to the United States or authorized under the law to be employed in that manner in the United States. If after receiving this public subsidy/grant from the CITY, the OWNER, or a branch, division, or department of the business, is convicted of a violation under 8 U.S.C. Section 1324a(f), the OWNER shall repay the amount of the grant from the CITY with interest, at the rate of 5% according to the terms provided by this AGREEMENT under Section 2264.053, but not later than the 120<sup>th</sup> day after the date the public agency, state or local taxing jurisdiction, or economic development corporation notifies the OWNER of the violation. CITY may exercise all rights to enforce this recovery as allowed by Subchapter C of Chapter 2264 or any other laws.

13. This shall constitute a valid and binding AGREEMENT between the CITY and MFIRM 1, LLC upon execution, and the terms and conditions are binding upon the successors and assigns of all parties hereto.

14. OWNER warrants to the best of its knowledge that the PREMISES do not include any property that is owned by a member of the City Council or any board, Commission or other governmental body approving or having responsibility for the approval of this AGREEMENT.

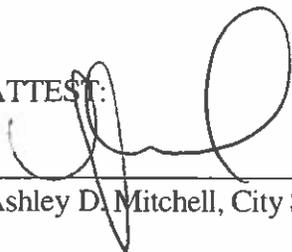
15. If any provision of this AGREEMENT or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, and such invalidity or unenforceability does not destroy the basis of the bargain between the parties, then the remainder of this AGREEMENT and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

16. Venue of any action to enforce any of the provisions hereof shall lie exclusively in Dallas County, Texas. The laws of the State of Texas shall apply in all respects to interpretation of the AGREEMENT.

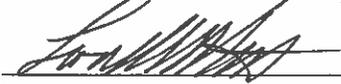
17. This AGREEMENT has been executed by the parties in multiple originals, each having full force and effect.

EXECUTED the 6<sup>th</sup> day of August, 2013.

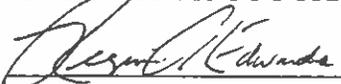
ATTEST:

  
\_\_\_\_\_  
Ashley D. Mitchell, City Secretary

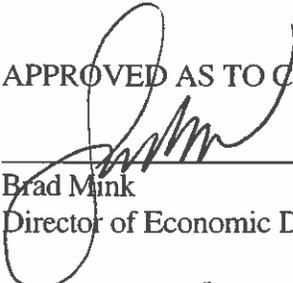
CITY OF CARROLLTON, TEXAS

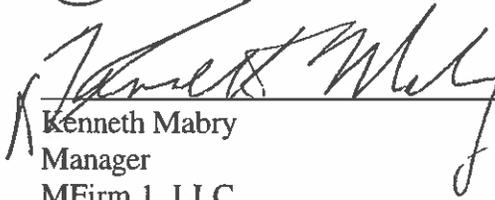
  
\_\_\_\_\_  
Leonard Martin, City Manager

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Regina Edwards  
First Assistant City Attorney

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Brad Mink  
Director of Economic Development

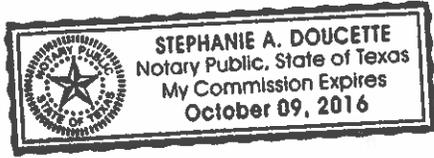
  
\_\_\_\_\_  
Kenneth Mabry  
Manager  
MFirm 1, LLC  
1722 Routh Street, Suite 1313  
Dallas, TX 75201

STATE OF \_\_\_\_\_ )

COUNTY OF Dallas )

**BEFORE ME**, the undersigned authority, on this day personally appeared Kenneth Mabry, Manager, MFirm 1, LLC 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 considerations therein expressed, in the capacity therein stated and as the act and deed of said limited partnership.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 20<sup>th</sup> day of August, 2013.



*Stephanie A. Doucette*

Notary Public

*Stephanie A. Doucette*

Printed or Typed Name of  
Notary Public

My commission expires:

10/09/16

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## EXHIBIT B

Owners Lertmcau  
State of Texas  
County of Dallas

BEING a tract of land situated in the J.M. Kennedy Survey, Abstract Number 741, City of Carrollton, Dallas County, Texas, and being all of that tract of land described in Special Warranty Deed to MFIRM Land, LP, as recorded in Instrument No. 201200361504, Official Public Records Dallas County, Texas (O.P.R.D.C.T.), and all of that tract of land described in Special Warranty Deed to MFIRM Land, LP, as recorded in Instrument No. 201200361503, O.P.R.D.C.T., and all of the remainder of that 30.3096 acre tract of land described in Special Warranty Deed to Billingsley Lake Carolyn Partners, LTD., as recorded in Instrument No. 200600081076, O.P.R.D.C.T., and being more particularly described as follows:

BEGINNING at a 1/2-inch iron rod with yellow plastic cap stamped "HALFF" (hereafter referred to as "with cap") set in the south right-of-way line of Belt Line Road (a variable width right-of-way) and the in the west right-of-way line of President George Bush Turnpike (SH 190) (a variable width right-of-way);

THENCE departing said south right-of-way line of Belt Line Road and along the said west right-of-way line of SH 190 the following bearings and distances:

South 39 degrees 08 minutes 42 seconds East, a distance of 59.61 feet to 1/2-inch iron rod with cap set for corner;

South 00 degrees 43 minutes 48 seconds West, passing at a distance of 612.70 feet a 1/2-inch iron rod with yellow plastic cap stamped "AZB" found on the said west right-of-way line of SH190, and continuing in all a total distance of 995.98 feet to a 1/2-inch iron rod with cap set for the point of curvature of a tangent circular curve to the right having a radius of 400.00 feet, whose chord bears South 19 degrees 21 minutes 26 seconds West, a distance of 255.53 feet;

Southerly, along said curve, through a central angle of 37 degrees 15 minutes 17 seconds, an arc distance of 260.09 feet to a 1/2-inch iron rod with cap set for corner;

South 37 degrees 59 minutes 04 seconds West, a distance of 369.56 feet to a 1/2-inch iron rod with cap set for corner;

South 20 degrees 58 minutes 51 seconds West, a distance of 101.37 feet to a 1/2-inch iron rod with yellow plastic cap stamped "AZB" found for corner;

South 21 degrees 09 minutes 23 seconds West, a distance of 129.44 feet to a 1/2-inch iron rod with cap set for corner in the common south line of said Billingsley Lake Carolyn Partners tract, and being in the north line of a tract of land described in Easement Deed to Farmers Branch-Carrollton Flood Control District, as recorded in Volume 77170, Page 2343, D.R.D.C.T.;

THENCE South 89 degrees 09 minutes 19 seconds West, departing said west right-of-way line of SH 190 and along the said common north and south lines, a distance of 757.63 feet to a point for the southwest corner of said Billingsley Lake Carolyn Partners tract, and being the southeast corner of a tract of land described in Special Warranty Deed to The City of Carrollton, as recorded in Volume 86244, Page 2024, D.R.D.C.T.;

THENCE departing said common north and south lines and along the common west line of said Billingsley Lake Carolyn Partners tract and the east line of said City of Carrollton tract the following bearings and distances:

North 19 degrees 49 minutes 14 seconds East, a distance of 166.69 feet to a point for corner;

North 32 degrees 15 minutes 22 seconds East, a distance of 395.92 feet to a point for corner;

North 11 degrees 15 minutes 12 seconds East, a distance of 213.00 feet to a point for corner;

North 09 degrees 48 minutes 39 seconds West, a distance of 583.49 feet to a point for corner;

THENCE North 05 degrees 47 minutes 39 seconds West, passing at a distance of 173.54 feet the most northerly southwest corner of said MFIRM Land, LP tract recorded in Instrument No. 201200361503, being the northwest corner of the remainder of said Billingsley Lake Carolyn Partners tract, and continuing along the common east line of said City of Carrollton tract and west line of said MFIRM Land, LP tract, in all a total distance of 446.66 feet to the northwest corner of said MFIRM Land, LP tract, and being in the said south right-of-way line of Belt Line Road;

THENCE departing said common east and west lines and along said south right-of-way line of Belt Line Road the following bearings and distances:

North 85 degrees 55 minutes 07 seconds East, passing at a distance of 215.10 feet a northeast corner said MFIRM Land, LP tract, also being the northwest corner of said MFIRM Land, LP tract recorded in Instrument No. 201200361504, and continuing in all a total distance of 225.68 feet to a 1/2-inch iron rod with cap set for the point of curvature of a non-tangent circular curve to the left having a radius of 2,182.00 feet, whose chord bears North 84 degrees 53 minutes 05 seconds East, a distance of 78.75 feet;

Easterly, along said curve, through a central angle of 02 degrees 04 minutes 05 seconds, an arc distance of 78.75 feet to a 1/2-inch iron rod with cap set for corner;

North 03 degrees 52 minutes 25 seconds West, a distance of 1.90 feet to a 1/2-inch iron rod with cap set for corner;

North 86 degrees 07 minutes 35 seconds East, a distance of 159.30 feet to a 1/2-inch iron rod with cap set for corner;

North 80 degrees 27 minutes 35 seconds East, a distance of 70.50 feet to a 1/2-inch iron rod with yellow plastic cap stamped "AZB" found for corner;

South 12 degrees 41 minutes 49 seconds East, a distance of 22.85 feet to a 1/2-inch iron rod with yellow plastic cap stamped "AZB" found for corner;

North 76 degrees 23 minutes 24 seconds East, a distance of 65.11 feet to a 1/2-inch iron rod with yellow plastic cap stamped "AZB" found for the point of curvature of a non-tangent circular curve to the right having a radius of 2,206.83 feet, whose chord bears North 80 degrees 10 minutes 03 seconds East, a distance of 342.12 feet;

Easterly, along said curve, through a central angle of 08 degrees 53 minutes 29 seconds, an arc distance of 342.46 feet to a 1/2-inch iron rod with cap set for the northeast corner of said MFIRM Land, LP tract recorded in Instrument No. 201200361504;

THENCE North 84 degrees 54 minutes 11 seconds East, continuing along said south right-of-way line of Belt Line Road, a distance of 22.29 feet to the POINT OF BEGINNING AND CONTAINING 1,510,689 square feet or 34.68 acres of land, more or less