

City of Spring Valley Village,
County of Harris,
State of Texas.

Economic Development Agreement **For <GRANTEE SHORT NAME>**

This economic development agreement (this "agreement") is entered into by and between the City of Spring Valley Village, Texas, (the "City"), a general law municipal corporation located at City Hall, 1025 Campbell Road, Spring Valley Village (Houston), Texas 77055, and **<GRANTEE FULL NAME>**, **<eg Corporation/Partnership>**, also known as **<Assumed Names, if any>**, located at **<proposed use address>** for the purposes and consideration stated below.

SECTION 1. RECITALS

- 1.1 The City finds that this agreement will promote local economic development and stimulate business and commercial activity in the City.
- 1.2 The City finds that this agreement complies with the City's Economic Development Incentive Policy.
- 1.3 The City finds that **<GRANTEE FULL NAME>**, did not have a tax situs in the City of **<Date Before Agreement>**.
- 1.4 The City finds that **<proposed use address>**, is not designated as first floor retail space by the City's applicable zoning ordinances.

SECTION 2. DEFINITIONS

- 2.1 **<GRANTEE SHORT NAME>** means **<GRANTEE FULL NAME>**, which also operates under various assumed names including **<Assumed Names, if any>**, and its related entities, if any, and their successors or assigns.
- 2.2 "Project" means a place of business as defined in Texas Tax Code §321.002(a)(3) and that is maintained and operated at **<proposed use address>**, Houston, Texas 77024 within the City.
- 2.3 "Project's sales tax revenue" means the amount of sales tax [one percent] collected by the City as a direct result of the Project under **<GRANTEE SHORT NAME>**'s sales tax permit or any other sales tax permit whose proper tax situs is located at the project, and any sales tax paid by **<GRANTEE SHORT NAME>** that **<GRANTEE SHORT NAME>** is able to document for the City, that results in additional revenue to the City (e.g., a Texas sales tax audit assessment) from the project, but shall not include:
 - (a) the collection fee [presently two percent of the one percent sales tax collected by the City] imposed by the Office of the State Comptroller;
 - (b) any other special district sales or use tax adopted or levied by the City; or
 - (c) any sales tax generated from any other location within the City.
- 2.4. "Qualified sales" means sales taxable under the Texas sales tax laws.

- 2.5 “Year” means the 12 month period beginning with the first full month of operation by <GRANTEE SHORT NAME> in the City of Spring Valley Village.
- 2.6 “Sales Tax” means sales and use taxes imposed under Chapter 321 of the Texas Tax Code, including §§ 321.101(2) and 321.103.

SECTION 3. TERM

- 3.1. This agreement shall become effective as of the date of execution by both parties.
- 3.2. This agreement shall remain in effect until the City has made the program grant set forth in Section 4 of the agreement, or until otherwise terminated under the provisions of this agreement. In any event, this agreement shall terminate 10 years or 120 months after the first full month of operation by <GRANTEE SHORT NAME> in the City or by <10 years after sign date>, whichever comes first.

SECTION 4. CITY’S OBLIGATIONS

- 4.1. The City shall provide a program grant to <GRANTEE SHORT NAME> consisting of a quarterly payment from the City’s general revenues in accordance with subsection 4.2 for a 10 year period following the first full month of operation by <GRANTEE SHORT NAME> in the City of Spring Valley Village; provided, however, that the program grant for <GRANTEE SHORT NAME>, if any, shall not exceed 50 percent of the project’s sales tax revenue during any year.
- 4.2 Except as provided by Section 4.3, the program grant for each year shall be:
- (a) 25% percent of the project’s sales tax revenue between \$0.00 and \$20,000.00;
 - (b) 35% percent of the project’s sales tax revenue between \$20,000.00 and \$50,000.00; and
 - (c) 50% percent of the project’s sales tax revenue over \$50,000.00.
- 4.3 There shall be no program grant for any year until and unless the project’s sales tax revenue for that year exceeds \$6,000.00 (\$600,000.00 in qualified sales).

SECTION 5. DOCUMENTATION

- 5.1 <GRANTEE SHORT NAME> shall submit to the City a certified written schedule (the “schedule”) detailing the project’s sales tax revenue for each quarter. All documents shall be based on actual taxable sales, and shall not be estimated.
- 5.2 Within 30 days of the receipt of any refund of sales tax shown on the schedule required by Section 5.1, <GRANTEE SHORT NAME> shall notify the City of such refund and provide documentation of such refund to the City.
- 5.3 <GRANTEE SHORT NAME> shall notify the City of any audit conducted or being conducted by the Office of the State Comptroller if such audit changes or affects, or could change or affect, the amounts set forth on the schedule filed with the City in accordance with Section 5.1. Such notification shall be made as soon a practicable, but in no event later than 60 days after the audit.
- 5.4 All applications and incentive computations shall be subject to review and verification by the City and its Administrator.

SECTION 6. WHEN PAYMENTS DUE

- 6.1 The City shall make the program grants provided by Section 4 above within 30 days of the date that the City receives from the State Comptroller the project's sales tax revenues for the corresponding annual payment owed to **<GRANTEE SHORT NAME>** and **<GRANTEE SHORT NAME>**'s schedule. In no event shall the City be required to make any program grant to **<GRANTEE SHORT NAME>** until it has received from the State Comptroller the project's sales tax revenues in excess of the program grant disbursement.
- 6.2. The City may withhold payment of the program grant until **<GRANTEE SHORT NAME>** provides the documentation required by Section 5 of this agreement.
- 6.3. The City shall adjust the program grant to reflect funds received by **<GRANTEE SHORT NAME>** as documented in Section 5.2 and audit assessments as documented in Section 5.3.
- 6.4. If the City determines that there are disputed project's sales tax revenues, then the City shall notify **<GRANTEE SHORT NAME>** in writing of the disputed amount. The City will not be required to pay on such disputed amount while the dispute is being resolved unless such dispute is unreasonable or made in bad faith.

SECTION 7. OTHER OBLIGATIONS OF PÉMIER TECHNOLOGY GROUP

- 7.1. **<GRANTEE SHORT NAME>** will maintain in the City of Spring Valley Village a place of business of a retailer as defined in Section 321.002(a)(3) of the Texas Tax Code.
- 7.2. **<GRANTEE SHORT NAME>** agrees to permit the City, its agents or designees, at the City's expense, to review and audit the Texas sales tax records of **<GRANTEE SHORT NAME>**, provided, however, that such audit shall take place during the normal business hours of **<GRANTEE SHORT NAME>** and at the location where **<GRANTEE SHORT NAME>** keeps its books and records for the project unless otherwise mutually agreed.

SECTION 8. DEFAULT

- 8.1. If either party should default (the "defaulting party") with respect to any of its obligations hereunder and should fail within 60 days after receipt of written notice of such default from the other party (the "complaining party") to cure such default, then the complaining party, by action or proceeding at law may sue for specific performance and may be awarded damages for such default subject to the limitations contained herein; in particular, **<GRANTEE SHORT NAME>** agrees that its damages shall be limited to any grant amounts, including interest, owed to it by City under this agreement and the City agrees that its damages shall be limited to an amount equal to any refund, reimbursement or repayment of the program grant that the City may be ordered to refund, reimburse or repay to the State, or that may be ordered offset or withheld from future City revenues.

SECTION 9. MUTUAL ASSISTANCE

- 9.1. The City and **<GRANTEE SHORT NAME>** shall do all things necessary or appropriate to carry out the terms and provisions of this Agreement, and to aid and assist each other in carrying out such terms and provisions.
- 9.2. **<GRANTEE SHORT NAME>** hereby consents to and agrees to cooperate in any request by the City to obtain copies of sales tax returns from the State that contain information pertinent to the calculation of the program grant.

SECTION 10. REPRESENTATIONS AND WARRANTIES

- 10.1. The City represents and warrants that:
 - (a) The City is a municipal corporation duly organized, validly existing, and in good standing under and by virtue of the laws of the State of Texas;
 - (b) The City has approved this agreement at a public meeting properly noticed under the provisions of the Texas Open Meetings laws; and
 - (c) The City knows of no litigation, proceedings, initiative, referendum, investigation, or the threat of any of the same, contesting the powers of the City or its officials with respect to this agreement that has not been disclosed in writing to **<GRANTEE SHORT NAME>**.
- 10.2. **<GRANTEE SHORT NAME>** represents and warrants that:
 - (a) **<GRANTEE SHORT NAME>** is a **<eg Corporation/Partnership>** organized and existing under and by virtue of the laws of the State of **<Texas>**, and has the power and authority to own its properties and to carry on the business as presently conducted and as represented in this agreement; and
 - (b) This agreement has been duly authorized, executed and delivered by **<GRANTEE SHORT NAME>**; **<GRANTEE SHORT NAME>** has all the requisite corporate power and authority to execute, deliver, and perform this agreement; and this agreement constitutes a valid and binding obligation of **<GRANTEE SHORT NAME>**.

SECTION 11. INTERPRETATION OF THE CONTRACT

- 11.1 This agreement has been reviewed and approved by each of the parties. In the event it should be determined that any provision of this agreement is uncertain or ambiguous, the language in all parts of this agreement shall be in all cases construed as a whole according to its fair meaning and not strictly construed for or against either party.
- 11.2 Section or other headings contained in this agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this agreement.

SECTION 12. DISPUTE RESOLUTION AND VENUE

12.1 This agreement is made, and shall be construed and interpreted under the laws of the State of Texas, unless preempted by an applicable federal law, and venue for any legal action shall lie in Harris County, Texas. The City and **<GRANTEE SHORT NAME>** agree that all claims, disputes, and controversies arising out of or in relation to the performance, interpretation, application, or enforcement of this agreement, including but not limited to breach thereof, shall be referred to mediation before, and as a condition precedent to, the initiation of any adjudicative action or proceeding.

SECTION 13. ENTIRE AGREEMENT

13.1 This agreement contains the entire agreement between the parties with respect to the project contemplated herein.

SECTION 14. AMENDMENT

14.1 This agreement may only be amended, altered, or revoked by written instrument signed by **<GRANTEE SHORT NAME>** and the City.

SECTION 15. SUCCESSORS AND ASSIGNS

15.1 This agreement shall be binding on and inure to the benefit of the parties, their respective successors and assigns. **<GRANTEE SHORT NAME>** may assign all or part of its rights and obligations hereunder to any subsequent purchaser of the property without the consent or approval by the City or to any other person only upon prior written approval of the City Council, which approval shall not be unreasonably withheld or delayed.

15.2 Notwithstanding the foregoing provisions of Section 15.1, in the event **<GRANTEE SHORT NAME>** desires to transfer or assign its rights or obligations hereunder to any entity under common control, controlled by or controlling **<GRANTEE SHORT NAME>** ("control" shall mean the ownership of 50 per cent or more of **<GRANTEE SHORT NAME>** as determined by vote or value), it shall have the right to do so without the consent or approval by the City, so long as **<GRANTEE SHORT NAME>** shall remain responsible and obligated to the City for the performance of its obligations under this agreement.

SECTION 16. NOTICE

16.1 Any notice and/or statement required and permitted to be delivered shall be deemed delivered by depositing the same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses, or at such other addresses provided by the parties in writing.

<GRANTEE SHORT NAME>

Attention: _____

CITY: City of Spring Valley Village
Attention: Richard Rockenbaugh
City Administrator
1025 Campbell Road
Spring Valley Village (Houston), Texas 77055

SECTION 17. COUNTERPARTS

17.1 This agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

EXECUTED this _____ day of _____, 2012.

CITY OF SPRING VALLEY VILLAGE, TEXAS:

By: Michael Andrews, Its Mayor

ATTEST:

Betty Lusk, City Secretary

By: _____
 <GRANTEE SHORT NAME>
 <Title>

ATTEST:

By: _____