

ORDINANCE NO. 2012-07-_____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, AMENDING THE AREA COMPRISING REINVESTMENT ZONE NO. 25 FOR THE CITY OF MCKINNEY, TEXAS; ESTABLISHING THE BOUNDARIES THEREOF AND OTHER MATTERS RELATING THERETO; APPROVING THE TERMS AND CONDITIONS OF COMMERCIAL-INDUSTRIAL TAX ABATEMENT AGREEMENTS; AUTHORIZING EXECUTION OF SUCH AGREEMENTS BY THE CITY MANAGER; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City Council of the City of McKinney, Texas (hereinafter referred to as the "City"), desires to promote the development or redevelopment of a certain contiguous geographic area within its jurisdiction by the creation of a reinvestment zone for commercial-industrial tax abatement, as authorized by chapter 312 of the Texas Tax Code, cited as the Property Redevelopment and Tax Abatement Act; and

WHEREAS, Reinvestment Zone No. 25 was established by Ordinance No. 2010-06-019 after a public hearing was held before the City Council on the 15th day of June, 2010, pursuant to Chapter 312 of the Texas Tax Code; and

WHEREAS, a public hearing before the City Council was set for 6:00 p.m. on the 17th day of July, 2012, such date being at least seven (7) days after the date of publication of the notice of such public hearing, pursuant to Section 312.201(d) of the Texas Tax Code; and

WHEREAS, the City held such public hearing after publishing notice of such public hearing, and giving written notice to all taxing units overlapping the territory inside the proposed reinvestment zone; and

WHEREAS, the City at such hearing invited any interested person, or his attorney, to appear and contend for or against the amendment of the reinvestment zone, the boundaries of the proposed reinvestment zone, whether all or part of the territory should be included in such amended reinvestment zone, the concept of tax abatement; and

WHEREAS, upon full review and consideration of the all matters attendant and related thereto, the City Council is of the opinion that the area described in *Exhibit A* of this Ordinance, which is attached hereto and incorporated herein, meets the criteria for designating an area as tax abatement reinvestment zone, pursuant to Section 312.202(a)(6) of the Texas Tax Code, because the designation of the area as described in *Exhibit A* as a reinvestment zone is "reasonably likely as a result of the designation to contribute to the retention or expansion of primary employment or to attract major investment in the zone that would be a benefit to the property and that would contribute to the economic development of the" City of McKinney, Texas.

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, THAT:

Section 1. The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

Section 2. Definitions.

(a) *Improvements* - Improvements shall include any activity at the location, including but not limited to new construction.

(b) *Taxable Real Property* - Taxable real property shall be as defined in the Texas Tax Code and shall not include personal property as defined in said Code.

- (c) *Base Year* - The base year for determining increased value shall be the taxable real property value assessed the year in which the agreement is executed.
- (d) *Personal Property* - Personal property shall be as defined in the Texas Tax Code and shall include all equipment, office furnishings, and inventory, and other items contained within the confines of the reinvestment zone.

Section 3. Findings and Determinations. The City, after conducting such public hearings, and having heard such evidence and testimony, has made the following findings and determinations based upon the testimony presented:

- (a) That a public hearing on the amendment of the reinvestment zone has been properly called, held and conducted, and that notices of such hearings have been published at least seven (7) days before the hearing in a newspaper of general circulation within the City, and mailed to all taxing units overlapping the territory inside the proposed reinvestment zone at least seven (7) days prior to the hearing; and
- (b) That the boundaries of the reinvestment zone should be the areas as described and depicted on the attached *Exhibit A*; and
- (c) That creation of the reinvestment zone for commercial-industrial tax abatement with boundaries as described in *Exhibit A* will result in benefits to the City, and to the land included within the zone, and the improvements sought are feasible and practical; and
- (d) That the investment zone as defined in *Exhibit A* meets the criteria for the creation of a reinvestment zone as set forth in Section 312.202(a)(6) of the Texas Tax Code in that it is “reasonably likely as a result of the designation to contribute to the retention or expansion of primary employment or to attract major investment in the zone that would be a benefit to the property and that would contribute to the economic development of the City”; and
- (e) That the reinvestment zone as defined in *Exhibit A* meets the criteria for the creation of a reinvestment zone as set forth in the City of McKinney Tax Abatement Guidelines and Criteria.

Section 4. Zone Designation. Pursuant to Section 312.201 of the Texas Tax Code, the City hereby amends Reinvestment Zone 25 for commercial-industrial tax abatement encompassing only the area described and depicted on the attached *Exhibit A*, and such reinvestment zone is hereby amended. Reinvestment Zone No. 25, City of McKinney, Texas is effective for five (5) years and may be renewed for periods not to exceed five (5) years. The expiration of the designation does not affect an existing tax abatement agreement.

Section 5. Effective Date of Amended Zone. The amended zone shall take effect immediately upon passage or at an earlier time designated by subsequent ordinance.

Section 6. Conditions for Application for Tax Abatement. To be considered for execution of an agreement for tax abatement, the commercial-industrial project shall:

- (a) Be located wholly within the zone as established herein.

- (b) Not include property that is owned or leased by a member of the City Council of the City of McKinney, Texas, or by a member of the Planning and Zoning Commission of the City of McKinney.
- (c) Conform to the requirements of the City's Zoning Ordinance and all other applicable laws and regulations.
- (d) Have and maintain all land located within the designated zone, appraised at market value for tax purposes.

Section 7. Terms of Exemption. A written agreement with the property owner located within the zone shall provide the terms regarding duration of exemption and share of eligible taxable real and personal property value from taxation.

Section 8. Criteria for Written Agreements. Written agreements under Section 312.205 of the Texas Tax Code must include provisions for:

- (a) Listing the kind, number, and location of all proposed improvements of the property.
- (b) Access to and inspection of property by municipal employees to ensure that the improvements or repairs are made according to the specification and conditions of the agreements.
- (c) Limiting the use of the property consistent with the general purpose of encouraging development or redevelopment of the zone during the period that property tax exemptions are in effect.
- (d) Recapturing property tax revenue lost as a result of the agreement if the owner of the property fails to make the improvements as provided by the agreement.

Section 9. Approval of Second Amended Tax Abatement Agreement. The City Council does hereby approve the Second Amended Tax Abatement Agreement attached hereto as Exhibit B.

Section 10. Severability. The provisions of this ordinance are severable. If any section, paragraph, sentence, subdivision, clause, or phrase of this ordinance or the application thereof to any person or circumstance is held invalid or held unconstitutional, such invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application.

Section 11. Effective Date. The caption of this ordinance is to be published in a newspaper having general circulation in the City of McKinney and shall be effective upon publication.

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF
McKINNEY, TEXAS, ON THIS 17th DAY OF JULY, 2012.**

CITY OF McKinNEY, TEXAS

BRIAN LOUGHMILLER
Mayor

CORRECTLY ENROLLED:

SANDY HART, TRMC, MMC

City Secretary
BLANCA I. GARCIA
Assistant City Secretary

DATE: _____

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney

Exhibit A

**Description and Depiction of
Amended Reinvestment Zone # 25
City of McKinney, Texas**

FIELD NOTE DESCRIPTION

LOTS 5R & 8

RECORD PLAT

HENNEYMAN-STACY ADDITION

BEING a 13.011 acre tract of land situated in the John W. Roberts Survey, Abstract Number 762, in the City of McKinney, Collin County, Texas and being part of Lot 5, Block A of the HENNEMEN-STACY ADDITION recorded in Cabinet 2010, Page 226 of the Plat Records of Collin County, Texas (PRCCT) and being part of Lot 3, Block A of the HENNEMAN-STACY ADDITION recorded in Cabinet 2010, Page 174 (PRCCT) and being a portion of Lot 6R1 & 7R1, Block A of the Amended Conveyance Plat of HENNEMAN-STACY ADDITION recorded in Cabinet 2011, Page 198 (PRCCT) and being all of Lots 5R and 8 of the unrecorded RECORD PLAT of HENNEMAN-STACY ADDITION and being more particularly described as follows:

BEGINNING 5/8 inch iron rod set for the southeast corner of said Lot 6R1 and being the northeast corner of said unrecorded Lot 8 and being located in the west line of Stacy Road (130' at this point);

THENCE along the west line of said Stacy Road, SOUTH 25°32'27" EAST a distance of 256.29 feet to the beginning of a non-tangent curve to the right having a radius of 30.00 feet and a chord bearing of South 50°07'04" West;

THENCE departing the west line of said Stacy Road with said non-tangent curve to the right through a central angle of 30°01'08" for an arc length of 15.72 feet to a 5/8 inch iron rod set for corner;

THENCE SOUTH 25°32'27" EAST a distance of 48.00 feet to a point for the southeast corner of said unrecorded Lot 8;

THENCE SOUTH 64°27'33" WEST a distance of 389.29 feet to a 5/8 inch iron rod set for corner;

THENCE SOUTH 34°52'50" WEST a passing distance of 92.26 feet to a common corner for the south lines of said unrecorded Lot 5R & 8, in all a total distance of 209.12 feet to a 5/8 inch iron rod set for corner;

THENCE SOUTH 89°21'08" WEST a distance of 532.32 feet to a 5/8 inch iron rod set for the southwest corner of said unrecorded Lot 5R;

THENCE NORTH 00°38'52" WEST a passing distance of 432.81 feet to a common corner in the west line of said unrecorded Lot 5R & 8, in all a total distance of 714.51 feet to a 5/8 inch iron rod set for the northwest corner of said unrecorded Lot 8;

THENCE NORTH 89°21'08" EAST a distance of 495.14 feet to a 5/8 inch iron rod set for corner;

THENCE SOUTH 70°19'37" EAST a distance of 354.93 feet to a 5/8 inch iron rod set for corner;

THENCE NORTH 64°52'20" EAST a distance of 69.15 feet to the POINT OF BEGINNING.

CONTAINING 13.011 acres or 566.761 square feet of land, more or less.

Exhibit B

Second Amended Tax Abatement Agreement

THE STATE OF TEXAS §
 §
 §
COUNTY OF COLLIN §

SECOND AMENDED TAX ABATEMENT AGREEMENT

This Second Amended Tax Abatement Agreement is entered into by and between the *City of McKinney, Texas*, a home rule municipality of Collin County, Texas, duly acting herein by and through its City Manager (hereinafter referred to as City) and *Traxxas, L.P.*, a Texas limited partnership (hereinafter referred to as “Traxxas”), duly acting herein by and through its General Partner, Traxxas Management, LLC.

WITNESSETH:

WHEREAS, on June 14, 2010, the City and Traxxas entered into a tax abatement agreement (“Original Tax Abatement Agreement”) for real property containing approximately twelve (12) acres of land and located at the corner of Henneman Way and Stacy Road in McKinney, Texas, and

WHEREAS, on July 19, 2011, the City and Traxxas entered into that certain First Amended Tax Abatement Agreement (“First Amended Agreement”) to extend the deadline for completion of the improvements on the Real Property, and

WHEREAS, the parties desire to modify the terms of the Original Tax Abatement Agreement and the First Amended Agreement to conform to the project’s scope and construction timeline; and

NOW, THEREFORE, the Parties hereby mutually agree as follows:

Section 1. The Original Tax Abatement Agreement and First Amended Agreement as executed by the City and Traxxas, L.P. are attached hereto as Exhibits A and B. The amended area of Reinvestment Zone 25, also the Real Property under the Original Tax Abatement Agreement is attached hereto as Exhibit C.

Section 2. On Page 2 of the Original Tax Abatement Agreement, the fourth paragraph shall be amended to read:

“**WHEREAS**, Traxxas acknowledges and agrees that as a condition to receiving a tax abatement a minimum taxable value (whether actual or rendered; and including an equivalent method through the execution of a Payment in Lieu of Tax Agreement) of Ten Million Dollars (\$10,000,000.00) as of January 1, 2013, and a minimum of Twelve Million Dollars (\$12,000,000.00) in subsequent Tax Years, on new real estate improvements and business personal property located on the Real Property that was not located in the City previous to the Effective Date of this Agreement; and”

Section 3. Section 2(e), **Definitions., Real Property.**, shall be amended to read as follows:

“(e) **Real Property.** The words “Real Property” mean the approximately 13.03 acre tract of land generally located at the corner of Henneman Way and Stacy Road in McKinney, Texas, and as further described and or depicted in **Exhibit B** of this Agreement, on which the Improvements will

be constructed.”

Section 4. Section 3 of the Original Tax Abatement Agreement and the First Amended Agreement is amended to read as follows:

“Section 3. Property Subject to Tax Abatement.

The real property subject to this Agreement shall be a fee simple interest owned by Traxxas or Starfish Investments, LP, in certain real property located at the corner of Henneman Way and Stacy Road in McKinney, Texas, and as further described and or depicted in **Exhibit B** of this Agreement, which is attached hereto and incorporated herein for all purposes. The property is hereinafter referred to as the Real Property and is located within said Reinvestment Zone No. 25, City of McKinney, Texas. The Real Property is the situs of the Improvements. The Real Property shall be subject to a tax abatement to the extent the market value thereof, as reflected on the tax rolls of the Collin Central Appraisal District, in any eligible year, exceeds the value thereof, as reflected on the tax rolls, in the year immediately preceding the commencement of construction of the Improvements on the Real Property.

This Tax Abatement Agreement is conditioned upon Traxxas receiving a Certificate of Occupancy for the Distribution Building on or before February 3, 2013, and is further conditioned upon Traxxas receiving a Certificate of Occupancy for the Office Building on or before July 31, 2013.

Further, Traxxas agrees to locate on the Real Property certain business personal property which was not on the tax rolls of the City prior to the Effective Date of this Agreement; such business personal property shall be referred to hereinafter as Personalty and shall be subject to the terms of the tax abatement described in this Agreement.

Traxxas agrees that to be eligible for the abatement described herein, the City shall be in receipt of a final, non-appealable determination of the Collin County Central Appraisal District of the taxable value of the Improvements and the Personalty (excluding the value of the land) which equals or exceeds **Ten Million Dollars (\$10,000,000.00)** as of January 1, 2013. If the Improvements and Personalty (excluding the value of the land) do not equal or exceed a taxable value of **Ten Million Dollars (\$10,000,000.00)** as determined by the Collin County Central Appraisal District or a final, non-appealable determination of taxable value has not been obtained, eligibility may alternatively be met by the receipt of written confirmation that for any affected Tax Year, Traxxas has rendered the value of the Improvements and Personalty with the Central Appraisal District of Collin County (“CAD”) at not less than **Ten Million Dollars (\$10,000,000.00)**; or in the alternative, and in conjunction with any affected Tax Year, Traxxas has elected and has executed a Payment in Lieu of Taxes Agreement with City covering any gap in City ad valorem taxes which would have been payable had the Improvements and Personalty been taxable at \$10,000,000.00 for Tax Year 2013. For all subsequent Tax Years, Traxxas shall be eligible for tax abatement only if it maintains a final, non-appealable determination of taxable value of not less than **Twelve Million Dollars (\$12,000,000.00)**.”

Section 5. All of the other terms, conditions and consideration for the Original Tax Abatement Agreement and the First Amended Agreement are unmodified by this Second Amended Tax Abatement Agreement and are continued in full force and effect.

Section 6. This Second Amended Tax Abatement Agreement shall not be considered a default of the Original Tax Abatement Agreement; however, the default provisions in Section 6 of the Original Tax Abatement Agreement remain

in full force and effect for the term of the Abatement.

Section 7. This Second Amended Tax Abatement Agreement shall constitute a valid and binding Agreement between the *City* and *Traxxas* when executed.

Section 8. This Agreement is performable in Collin County, Texas, to be effective as of the _____ day of _____, 2012 ("effective date").

ATTEST:

CITY MCKINNEY, TEXAS

SANDY HART, TRMC, MMC
City Secretary
BLANCA I. GARCIA
Assistant City Secretary

JASON GRAY
City Manager

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney for the
City of McKinney, Texas

TRAXXAS, L.P.,
a Texas limited partnership,

By TRAXXAS MGMT, LLC
Its General Partner

By: _____

Title: _____

Date: _____