

RESOLUTION NO. 2013-02-\_\_ (R)

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, APPROVING A THIRD AMENDMENT TO THE COMMERCIAL-INDUSTRIAL TAX ABATEMENT AGREEMENT WITH TRAXXAS, L.P., A TEXAS LIMITED PARTNERSHIP.; AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE THIRD AMENDED TAX ABATEMENT AGREEMENT**

**WHEREAS**, Chapter 312 of the Texas Tax Code authorizes the City of McKinney, Texas, to participate in tax abatement agreements; and

**WHEREAS**, the City Council of the City of McKinney, Texas, finds and determines that entering into tax abatement agreements will be to the benefit of the citizens of the City of McKinney; and

**WHEREAS**, the City Council also desires to approve the Third Amended Tax Abatement Agreement, a copy of which is attached hereto as **Exhibit A**, to be entered into by and between the City of McKinney, Texas, and Traxxas, L.P., a Texas limited partnership.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, AS FOLLOWS:**

Section 1. That the foregoing recitals are hereby found to be true and correct legislative findings of the City of McKinney, Texas, and are fully incorporated into the body of this resolution.

Section 2. The City Council of the City of McKinney, Texas does hereby adopt the third amendment to the commercial-industrial tax abatement agreement, a copy of which is attached hereto as **Exhibit A**, by and between the City of McKinney, Texas, and Traxxas, L.P., a Texas limited partnership.

Section 3. The City Manager is hereby authorized to execute the Third Amended Tax Abatement Agreement between the City of McKinney, Texas and Traxxas, L.P., a Texas limited partnership, a copy of which attached hereto as **Exhibit A**.

Section 4. This resolution shall become effective from and after its passage.

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS ON THE 19th DAY OF FEBRUARY, 2013.**

\_\_\_\_\_  
BRIAN LOUGHMILLER  
Mayor

ATTEST:

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

APPROVED AS TO FORM:

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MARK S. HOUSER  
City Attorney

**EXHIBIT A**

THE STATE OF TEXAS

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§

COUNTY OF COLLIN

**THIRD AMENDED TAX ABATEMENT AGREEMENT**

This Third 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.

W I T N E S S E T H:

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, on July 17, 2012; the City and Traxxas entered into that certain Second Amended Tax Abatement Agreement (“Second Amended Agreement”) to redefine the meaning of Real Property and to modify the terms of the property subject to the tax abatement, and

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

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

Section 1. Section 3 of the Original Tax Abatement Agreement, the First Amended Agreement, and the Second 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 April 1, 2013, and is further conditioned upon Traxxas receiving a Certificate of

Occupancy for the Office Building on or before December 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 **Twenty Million Dollars (\$20,000,000.00)**."

- Section 2. All of the other terms, conditions and consideration for the Original Tax Abatement Agreement, the First Amended Agreement, and the Second Amended Agreement are unmodified by this Third Amended Tax Abatement Agreement and are continued in full force and effect.
- Section 3. 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 4. This Third Amended Tax Abatement Agreement shall constitute a valid and binding Agreement between the City and Traxxas when executed.
- Section 5. This Agreement is performable in Collin County, Texas, to be effective as of the 3rd day of February, 2013 ("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

**TRAXXAS, L.P.,**  
a Texas limited partnership,  
By TRAXXAS MGMT, LLC  
Its General Partner

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_