CITY OF WINDCREST ECONOMIC DEVELOPMENT CORPORATION
BOARD OF DIRECTORS

Special Called Meeting

NOVEMBER 6, 2023
1:00 P.M.

Windcrest City Hall

NOTICE IS HEREBY GIVEN THAT A **SPECIAL CALLED** MEETING OF THE BOARD OF DIRECTORS OF THE WINDCREST ECONOMIC DEVELOPMENT CORPORATION (WEDC) WILL BE HELD AT WINDCREST CITY HALL, 8601 MIDCROWN DRIVE, WINDCREST, TEXAS ON THE 6TH DAY OF NOVEMBER 2023 STARTING AT 1:00 P.M. DURING THE MEETING, THE BOARD WILL CONSIDER, DELIBERATE AND MAY TAKE ACTION UPON ANY OF THE SUBJECTS LISTED BELOW.

"The Board intends to have a quorum physically present at the above address. Board members not physically present may participate by live two-way video and audio feed in accordance with the Texas Open Meetings Act."

Vision Statement: Nourish and develop a vibrant community that consistently pushes the limits.

Mission Statement: Facilitate interaction between business, city, and other community organizations to nourish the economic health and well-being of Windcrest, its citizens, and the region.

Request all pagers and cell phones be turned off, except emergency on-call personnel. Citizens are asked to refrain from talking during proceedings unless recognized by the Presiding Officer.

CITIZEN COMMUNICATION: AS A COURTESY TO CITIZENS IN ATTENDANCE, AND AT THE DISCRETION OF THE PRESIDING OFFICER OF THE MEETING, CITIZENS WILL BE GIVEN A REASONABLE OPPORTUNITY TO STATE THEIR COMMENTS OR ASK QUESTIONS REGARDING ANY ITEM ON THE AGENDA, AND BEFORE THE BOARD TAKES ACTION ON ANY ACTION ITEMS LISTED. THE BOARD REQUESTS COMMENTS BE BRIEF, TO THE POINT, AND NO LONGER THAN 6 MINUTES. TIME CANNOT BE YIELDED TO ANOTHER SPEAKER. PLEASE NOTE THAT THE BOARD MAY NOT BE PERMITTED TO RESPOND TO QUESTIONS OR COMMENTS.

Items will not necessarily be discussed or considered in the order they are printed on the agenda below. If during the course of the meeting, discussion of any item on the agenda should be held in an executive or closed session, the Board will convene in such executive or closed session as permitted by and in accordance with Texas Government Code Chapters 551 and 551.

Consistent with Windcrest City Council Resolution No. 292, the WEDC Board elects to audio and video record its meetings. The recordings are preserved electronically as the official minutes of its meetings.

I. Call To Order

1. Determination of a Quorum
2. Pledge of Allegiance
3. Prayer
4. Vote to consider the excuse of an absent board member(s), if applicable

II. Citizens to be Heard

1. Members of the public may sign up to provide public comments to the Board in accordance with Board and City ordinances and policy.

NOTE: Citizens may address the WEDC on topics not on the agenda for no more than three (3) minutes. An email statement may be sent to the WEDC Coordinator at knelson@windcrest-tx.gov to be read into the meeting to the WEDC Board.

III. Discuss and Act

1. Consider and take possible action to approve a resolution authorizing Type B Project and Incentives for Rackspace property to Industrial Commercial Properties, LLC and approving Master Economic Incentive Agreement and Lease Agreement.

IV. Executive Session

1. Govt. Code 551.072, 551.071, 551.087 Consultation with Legal Counsel regarding real estate transactions, discussion regarding the purchase, lease, or exchange of real property within the City of Windcrest, and economic development/redevelopment of property.
2. Active and Confidential Economic Development Projects.

V. **Resume Open Session**: Consider and take possible action on matters discussed in the executive session, potential purchase of real property, and economic incentive requests.

VI. General Announcements and Future Agenda Items Requested

VII. Adjournment

I, the undersigned authority, do hereby certify that the above Notice of Meeting of the Board of Directors of the WEDC is a true and correct copy of said Notice and I posted a true and correct copy of said Notice on the bulletin board at the Windcrest City Hall in a convenient place to the public. Said Notice was posted 72 hours before the 6th day of November 2023.

By:***DATE & SIGNATURE PENDING***
Rachel Dominguez, City Secretary

INDUSTRIAL COMMERCIAL PROPERTIES

MIXED USE
COMMERCIAL, BUSINESS, INDUSTRIAL & RETAIL DEVELOPMENT PROJECT

MASTER ECONOMIC INCENTIVES AGREEMENT

_______________, 2023

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MASTER ECONOMIC INCENTIVES AGREEMENT

This MIXED USE COMMERCIAL/BUSINESS/INDUSTRIAL/RETAIL DEVELOPMENT PROJECT MASTER ECONOMIC INCENTIVES AGREEMENT (this "Agreement") is hereby made and entered into effective as of ____________, **2023** (the "Effective Date") by and between the **City of Windcrest, Texas** (the "City"), **City of Windcrest Economic Development Corporation** ("WEDC"), **Industrial Commercial Properties, LLC**, an Ohio limited liability company ("ICP"), and Bexar County, Texas ("Bexar County"). The City, WEDC, Bexar County and ICP may hereinafter be referred to collectively as the "Parties" and individually as a "Party."

JOINT RECITALS OF ALL PARTIES

WHEREAS, the Parties desire to enter into this Agreement and agree that this Agreement shall govern the rights, obligations, covenants and agreements of the Parties with respect to the subject matter contained herein; and

WHEREAS, Article III, Section 52-a of the Texas Constitution expressly authorizes the State of Texas (the "State") and local governments to use public funds for the valid public purposes of development and diversification of the economy of the State, the elimination of unemployment or underemployment in the State, or the development or expansion of transportation or commerce in the State; and

WHEREAS, consistent with Article III, Section 52-a of the Texas Constitution, the Parties desire to work together in good faith to bring a mixed use commercial/business/retail development to the City at the Location, as defined below, and thereby advance the public interest and serve the valid public purposes of developing and diversifying the economy of the State, eliminating unemployment or underemployment in the State, and developing or expanding transportation or commerce in the State; and

WHEREAS, to ensure that the benefits the Parties provide under this Agreement are utilized in a manner consistent with Article III, Section 52-a of the Texas Constitution, and other law, ICP has agreed to comply with certain conditions for receiving those benefits, as described in the Project requirements set forth herein; and

WHEREAS, the City of Windcrest is a home-rule municipality with the power of local self-governance under the Texas Constitution, specifically Texas Constitution, Article XI, Section 5; and

WHEREAS, the WEDC is a Type B corporation created pursuant to Texas law, the authority of the Development Corporation Act, as amended, Chapters 501 and 505 of the Texas Local Government Code (the "Act") which was created by the City pursuant to such authority; and

WHEREAS, it has been determined that Section 505.158 of the Act allows the WEDC to use funds in connection with land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements that the board of directors of the WEDC believes would promote new or expanded business development in the City; and

WHEREAS, it has been determined that Section 501.159 of the Act and Chapter 2 of Texas Business Organizations Code (the "Business Organizations Code") allow WEDC to acquire and hold certain real estate located in the City; and

WHEREAS, it has been determined that Section 501.054 of the Act and Chapters 20 and 22 of the Business Organizations Code, the WEDC may make contracts and enter into a performance agreement and directly incentivize a project using or pledging its property, franchises, and income; and

WHEREAS, ICP has joined WEDC to assist with the redevelopment of that certain tract of land and improvements comprised of the property formerly known as the Windsor Park Mall which was subsequently developed for use as the Rackspace Corporate Headquarters into a mixed use commercial/business/industrial/retail development at the Location (as defined below) such tract being a redevelopment that will benefit the WEDC, Bexar County and City with tax revenues, job creation, the availability of commercial retail businesses, industry, employers, residents, and tourists, and increased potential sales traffic and revenue generation to and from businesses in the City; and

WHEREAS, pursuant to the Act, ICP, as the new operating entity, shall transfer and convey fee title upon acquiring to WEDC, and WEDC and ICP shall contemporaneously enter into the Lease (as defined herein) which shall govern ICP's use and operation of the Location, including any redevelopment, assignment and subleasing, if any, of the Location to other businesses beneficial to WEDC, Bexar Cunty and the City; and

WHEREAS, Bexar County is a political subdivision of the State of Texas and a participating party to this Agreement for the limited purposes set forth below; and

WHEREAS, the City, Bexar County and the WEDC have determined that granting the economic incentives in accordance with this Agreement will: (i) further the objectives of the City, Bexar County and the WEDC; (ii) benefit the City, Bexar County and its residents and businesses; and (iii) promote new or expanded business development in Bexar County and the City; and

WHEREAS, ICP agrees to enter into this Agreement and Performance Requirements (Section 2.4) required under Section 501.158 of the Act, and subject to the express requirements, terms and conditions of the Act; and

WHEREAS, the Parties desire to enter into this Agreement and agree that this Agreement shall also govern the rights, obligations, covenants, and agreements of the Parties with respect to the subject matter contained herein.

NOW, THEREFORE, upon and in consideration of the mutual promises and covenants contained herein and for other valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

ARTICLE 1

DEFINITIONS

Section 1.1 "Agreement" means this Agreement and any attached Exhibit or written addendum to this Agreement agreed to by the Parties.

Section 1.2 "Business Activities" means the operation by ICP of a mixed use commercial/business/industrial/retail development and for such business, and the business operations of any assignee, tenant, subtenant or licensee of ICP, approved by WEDC and City in accordance with the Lease and located at or within the Location.

Section 1.3 "Exemption Period" means the period from December 31, 2023 through December 31, 2030.

Section 1.4 "Location" means that certain real property located in the City of Windcrest, Bexar County, Texas, and any improvements and renovations now existing or to be constructed thereon, being more particularly described as approximately 67 acres and 1.2 million square feet of commercial retail space formerly known as the Windsor Park Mall and subsequently known as Rackspace Corporate Headquarters located at 1 Fanatical Place, Windcrest, Texas.

Section 1.5 "Lease" means that certain Lease with Option to Purchase entered into contemporaneously with this Agreement by and between WEDC as landlord ("Landlord"), and ICP as tenant ("Tenant"), for the lease of the Property, as may be amended from time to time; and which is controlling of all matters in and to any sublease for a portion of the Property by and between ICP as Landlord and any sublessee as Tenant.

Section 1.6 "Project" means the project described in Section 2.4 of this Agreement.

Section 1.7 "Property" means the Location and the Real Property Improvements (and any taxable leasehold or other possessory interest in the property) located in Bexar County, Texas that are owned by the WEDC and leased to ICP (or its assignees, tenants or subtenants approved by WEDC) under this Agreement for use when conducting the Business Activities and that are more particularly depicted on Exhibit ___ attached hereto, together with all and singular the estate, interests, reversions, remainders, licenses, contracts, permits, approvals, authorities, consents, bonds, rights, benefits, utilities' capacities, easements, tenements, entitlements, hereditaments, privileges and appurtenances thereon or in anywise appertaining thereto (whether surface, subsurface or otherwise), together with all improvements situated thereon, and any right, title and interest of Seller in and to adjacent streets, alleys and rights-of-way (the "**Property**").

Section 1.8 "Real Property Improvements" means the buildings and other property improvements owned by WEDC (whether now existing or constructed in the future by ICP or any other party on ICP's behalf) and leased to ICP under the Lease (or ICP's assignees, tenants or subtenants approved by WEDC) for use when conducting the Business Activities.

Section 1.9 "Related Organization" means an entity or person who (a) is directly or indirectly controlled by, or under common control with ICP; (b) owns directly or indirectly a majority equity or voting interest of ICP; (c) is a successor by merger or other business combination with ICP such that substantially all of the business assets of ICP remain in the merged or combined entity; or (d) an approved purchaser or assignee of ICP. For the purposes of this section, the phrase "controlled by," "under common control," and/or words of similar import mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through ownership of voting securities or partnership or other voting interests, by contract or otherwise.

Section 1.10 "Section 505.161" shall mean Section 505.161 of the Act and any other statute that enables the Property to be exempt from ad valorem property taxation.

Section 1.11 "PILOT" stands for "Payment In Lieu Of Taxes" and a "PILOT Payment" means a payment to a designated local taxing authority (as expressly provided herein) which has ad valorem taxes (or an estimate of same) as its basis of calculation in lieu of the ad valorem property taxes that would otherwise be assessed for a given tax year against the Property if it was not property tax exempt.

Section 1.12 "Sublease" means that certain Lease entered into by and between ICP as landlord ("Landlord"), and a retail/commercial/business entity as tenant ("Tenant"), for the lease of a portion of the Property, as may be amended from time to time; and which 1) shall be subordinate in all terms and provisions to the Lease with Option to Purchase between WEDC as Landlord and ICP as Tenant and 2) shall not operate in conflict with any provisions of this Agreement, agreeing hereby that, if a conflict arises, the provisions of this Agreement control.

The Parties acknowledge that Bexar County Appraisal District may have not previously determined the appraised value for ad valorem property tax purposes that would typically be used to calculate the amount of taxes otherwise assessed against the Property. Therefore, it is the intent of the Parties that whenever it is necessary to determine the appraised value of the Property for the purpose of calculating a PILOT Payment, the Parties will rely on the full purchase price ICP paid to Rackspace to purchase the property pursuant to the closing statement, unless the Parties agree to mutually retain a third-party appraiser to determine an appraised value for ad valorem property tax purposes.

ARTICLE 2
GENERAL TERMS

<u>Section 2.1 Purpose</u>

The purpose of this Agreement is to provide a direct incentive to ICP by the City and WEDC in exchange for ICP's commitment to redevelop the Location into a mixed use commercial/business/industrial/retail development that will benefit the WEDC and City with tax revenues, job creation, business development (on both the Property and surrounding area), the availability of commercial retail businesses, industry, employees, residents, and increased potential sales traffic and revenue generation to and from businesses in the City.

<u>Section 2.2 Agreement Term</u>

City, WEDC and ICP acknowledge and agree that, unless earlier terminated by the Parties pursuant to the terms of this Agreement, this Agreement shall be effective commencing on the Effective Date and continuing through December 31, 203[illegible], unless terminated pursuant to the terms of this Agreement (the **"Term"**).

<u>Section 2.3 Express Contingencies</u>

The Parties have identified the following as essential and material terms of this Agreement:

A. ICP transferring ownership with fee title to WEDC and ICP and WEDC entering into a Lease Agreement with Purchase Option with a seven (7) year term expiring December 31, 2030;

B. ICP renovating the Property as described herein, and making the **Minimum Capital Investment** (as defined below) in the Project;

C. ICP marketing, operating and subleasing the Property as a mixed use commercial/business/industrial/retail development for the Term as described herein;

D. ICP meeting and/or exceeding the ICP Project Requirements as described herein and in the Performance Agreement;

E. ICP obtaining a final and complete release of all liens on any and all construction and/or renovations from subcontractors, trades, and materialmen; and

F. ICP and/or its tenants, subtenants or assignees providing, at a minimum, for a schedule of additional payroll or jobs to be created or retained ("job creation" as defined below) in the Project and Performance Agreement.

G. The WEDC shall convey, upon demand by the City, an undivided half interest in certain portions of the parking lot areas, curb cut areas, and areas which directly connect to existing public rights-of-way, such as streets, roads, highways, bridges, sidewalks or parking structures, in order for the City to manage traffic flow in and out of the Property from the right-of-way, accommodate additional drainage needs, and better integrate the project into existing public infrastructure. Making demand for such conveyances and facilitating any improvements by the City is at the City's sole discretion. The parties agree the City can make demand for conveyance of such areas and expend such funds as the City determines is appropriate as long as the City utilizes public funds for the purchase of materials, supplies, equipment, machinery, buildings, land, and rights-of-way for authorized needs and purposes. The City has the right, but not the obligation, to trigger such demand and make such improvements. However, no City improvements can unreasonably interfere with ICP's use of the Property under the project approved in this Agreement.

H. The WEDC and ICP agree that the City of Windcrest can, but is not required to, utilize public funds in the demolition of any dangerous or dilapidated structures or portions of structures determined by the City to exist on the Property at any time during the Exemption Period.

I. ICP shall comply with the material obligations required by Bexar County under any separate economic development agreement between ICP and Bexar County which is approved within six months of this Agreement. The City and WEDC retain the authority, but not the obligation, to waive any breach of material obligations of ICP to Bexar County.

<u>**Section 2.4 ICP Project Performance Requirements**</u>

A. <u>The Project</u>

1. <u>Minimum Capital Investment</u>. ICP shall make a total investment of no less than **$40 million,** which includes an initial investment for the purchase of the Property of $21.5 million and an additional investment of at least $18.5 million in direct expenditures by ICP for the adaptive reuse, renovation and refurbishment of the Property and improvements as described herein, with substantial completion of construction of the improvements on or to the Property (defined as Real Property Improvements) to occur on or before the end of 2028, the fifth (5^{th}) year of the Term. The Minimum Capital Investment shall be paid pursuant to section 2.4 B. below, and all construction of the Real Property Improvements shall be performed in accordance with the design plans to be developed by ICP after written approval by WEDC. Minimum

Capital Investment does not include any investment or funds used for improvements made by the City pursuant to Section 2.3(G) or (H) above. Any capital investment that constitutes an ICP approved permanent improvement to the Property made by a tenant or subtenant of ICP under a qualified sublease before the end of the 5th year of the Term may be applied toward ICP's Minimum Capital Investment project requirement threshold, subject to submission to and approval of same by the WEDC.

2. Construction. ICP shall establish a mixed use commercial/business/retail development on the Property, utilizing the approximately 1.2 million square foot structure as needed, as described in the design plans to be developed by ICP, at ICP's sole cost and expense and at ICP's reasonable discretion; provided, however, all development shall be performed in accordance with such plans as described by ICP's submittal to WEDC for its prior written approval, such approval not to be unreasonably withheld, conditioned or delayed. Further, all development and operation shall be performed in accordance with the City's adopted ordinances.

3. Job Creation. ICP shall create, or cause to be created and maintained by the Project tenants, subtenants or assignees, no less than 600 new jobs during the Term, with at least 100 new jobs to be created by the end of year two (2) of the Term, at least 300 new jobs to be created by the end of year four (4) of the Term, at least 500 new jobs to be created by the end of year five (5) of the Term and at least 600 new jobs by the end of year seven (7) of the Term.

4. Labor and Materials. ICP shall exercise its best efforts to require all labor and materials for the renovation and construction (or for any Tenant Improvements) of the Project are sourced by ICP or Tenant/Subtenant contractors at the Project site or at a WEDC address to ensure sales tax related to the renovation and construction of the Project is attributed to the City. ICP shall include in any lease or sublease a clause intended to ensure that its tenants and/or subtenants, as applicable, comply with this provision.

5. Taxable Sales Goal. ICP shall exercise its best efforts to secure and lease to businesses that collectively generate annual taxable sales (therefore local sales tax collected for the City) with a goal of at least $1,500,000 per City fiscal year and $10,000,000 of total taxable sales for the entire Project to be generated by the end of 2030, the seventh (7th) year of the Term.

6. Improvements. ICP shall work with WEDC in accordance with all applicable state, local and City standards and codes to improve traffic patterns for customers of onsite tenants. ICP shall make improvements to the larger parking lot as part of needed improvements to the common area for the entire Project to benefit all tenants. Improvements will include but are not limited to repaving, lighting, and landscaping and will be constructed according to the design plans as required herein by this Agreement . If the City determines that ICP and the WEDC's efforts and not sufficiently effective to improve traffic patterns, the City may make demand for conveyance of necessary portions of the Property pursuant to Section 2.3(G) or (H) and may take such actions as are necessary to sufficiently improve traffic patterns.

7. Naming of the Business Park. ICP shall permanently include "Windcrest" in the name of the commercial/business/industrial/retail development created by the Project.

8. New Pad Sites. ICP shall make available for sale and/or long term lease at least two (2) new pad sites for commercial retail projects. At least one of the pad sites shall be located along

Walzem Road, East of Firestone. The two (2) new pad sites above shall not include the site next to the former IHOP site which remains a commercial retail site.

B. Payment and Job Creation Deadlines

Year 0:	Dec. 31, 2023	"Effective Date"
Year 1:	Dec. 31, 2024	$24 million investment including Purchase Price
Year 2:	Dec. 31, 2025	$28 million investment with 100 Jobs created
Year 3:	Dec. 31, 2026	$32 million investment with no new Jobs created for 100 Jobs total
Year 4:	Dec. 31, 2027	$36 million investment with 200 additional Jobs created for 300 Jobs total
Year 5:	Dec. 31, 2028	$40 million investment with 200 additional Jobs created for 500 Jobs total
Year 6:	Dec. 31, 2029	No new $ investment and no new Jobs created for 500 Jobs total
Year 7:	Dec. 31, 2030	100 additional Jobs created for 600 Jobs total

C. Investment and Direct Incentive by WEDC, City and Bexar County

1. Subject to the City receiving the Rackspace payment in C. 2 below, the Express Contingencies in section 2.3 and ICP meeting the Project Requirements in Section 2.4 herein, WEDC agrees to pay ONE MILLION THREE HUNDRED THOUSAND DOLLARS AND NO/100 ($1,300,000.00), the City agrees to pay SEVEN HUNDRED THOUSAND DOLLARS AND NO/100 ($700,000.00), and Bexar County agrees to the provision of the economic incentive set forth in Section 2.4 (C)(3) below, such payments and incentives being paid and made to ICP upon the purchase price closing for the Property scheduled on or about December 31, 2023 or earlier if agreed to between the Parties (the "Closing"). Such payments and incentives are, to be utilized for interior demolition and for construction necessary to make at least an initial 150,000 square feet of the Property ready for tenants lease/sublease and to build-out ("tenant ready substantial completion") for their use.

2. Upon the settlement and final receipt of the Rackspace payment from Rackspace to the City pursuant to a separate agreement between the City, WEDC and Rackspace (the "Rackspace Payment"), the full amount of that portion of the Rackspace Payment which may be attributable to Bexar County under the terms of that certain Second Amended and Restated Rackspace US, Inc. Redevelopment Project Master Economic Incentives Agreement entered into as of March 24, 2020, which payment Bexar County hereafter fully disaffirms and declines for the purposes set forth in this Agreement on condition that such funding shall be fully contributed to the Project by the City.

3. Should ICP not have completed the initial 150,000 square feet of the Property to a level of "tenant ready substantial completion" including the demolition and construction of Tenant Improvements which makes at least the initial 150,000 square feet of space complete and ready for occupancy/leasing/subleasing by end of 2025, the City, WEDC and Bexar County may, but are not obligated to, recapture some or all of the Directive Incentive amounts paid to ICP at Closing.

ARTICLE 3

ICP COMMITMENT, EARLY TERMINATION AND FAILURE OF PERFORMANCE OBLIGATIONS

Section 3.1 A – DIRECT INCENTIVE AND RECAPTURE

(a) If ICP or a Related Organization occupies and/or uses the Property for Business Activities pursuant to the Lease and subsequently the Lease is terminated due to a default or earlier termination thereunder (hereinafter referred to as a "Cessation of Business Activities") during the Exemption Period for any reason, then WEDC shall have the right to automatically and immediately terminate this Agreement upon delivery of written notice to ICP or the Related Organization, as applicable. Said termination shall be effective for the calendar year during which such Cessation of Business Activities occurred.

(b) Upon a termination under Section 3.1(a), ICP shall be required to repay to the City, Bexar County and WEDC the full amount of the Direct Incentive specified in Section 2.4(C)(1) above, as well as Section 2.3(G) and (H) above, if triggered, as an authorized recapture amount for the Directive Incentive granted to ICP by the City and WEDC under this Agreement and/or during the Exemption Period due to such early termination (the "Recapture"). Should the City or the WEDC receive Recapture funding related to the Bexar County participation under Section 2.4(C)(1)(d), these funds may be held by the City for future use with respect to the Property or otherwise distributed by the City to the County as appropriate.

(c) Notwithstanding anything to the contrary in this Agreement, Bexar County shall have the right, at its sole discretion, to seek Recapture from ICP of any funding provided pursuant to Section 2.4(C)(1)(d) in the event that ICP fails to make the Minimum Capital Investment set forth in Section 2.4(A)(1) above.

Section 3.1 B – PILOT PAYMENTS FOR TAX ABATEMENTS

(a) ICP is required, under Section 2.3 herein, to perform the Express Contingencies, including but not limited to the Job Creation and Minimum Capital Investment obligations hereunder. Should ICP fail to meet such obligations, ICP shall be required to pay a Payment In Lieu of Taxes Payment (the "PILOT" Payment) to the City of an amount equal to the ad valorem taxes which would have been assessed by the City against the Property for the calendar year in which the Cessation of Business Activities occurred, as if the Property had not been exempt from property taxes.

(b) In addition to the PILOT Payment due under Section 3.1B(a), upon any failure to meet such performance obligations, ICP shall be required to pay an additional PILOT Payment to the City of an amount equal to the ad valorem taxes which would have been assessed by the City against the Property for the previous years during the Exemption Period if the Property had not been exempt from property taxes.

(c) Should ICP fail to meet the performance obligations under this Agreement, and PILOT Payments to the City are due pursuant to this section 3.1B, ICP may, but is not obligated to charge its tenants or subtenants under any sublease (as defined herein) and collect for such

PILOT Payments based on the purchase price of the Property as of the date of closing; provided, however, ICP shall remain obligated for such PILOT Payments whether or not such charge is passed through to ICP's tenants and/or subtenants (if any) and if any such charges are collected from any tenants and/or subtenants.

(d) Any PILOT Payment due under this Agreement payable by ICP to the City shall be paid within ten (10) calendar days after the City provides its written notice of same to ICP.

(e) ICP shall wire such PILOT Payments within the above due date in readily available funds into an interest-bearing escrow account to the Escrow Agent (as defined in paragraph 6(d)(3) of the Lease) of an amount equal to the obligations required of it pursuant to the MEIA.

Section 3.1 C – PILOT PAYMENTS FOR NEISD

(a) ICP shall make annual PILOT Payments to the North East Independent School District of $100,000.00 on or before December 31st each year of the Term. ICP may collect funds for this PILOT Payment by allocation of expense to its tenants or subtenants, but ICP shall be the entity responsible for such PILOT payments directly to NEISD.

Section 3.2 Intentionally Deleted.

Section 3.3 The City and WEDC shall have the right to take all appropriate action to which it may be entitled, at law or in equity, to enforce the obligations of ICP pursuant to this Agreement, including, without limitation, any and all rights and remedies afforded to WEDC under the Lease. Nothing in this Agreement prevents nor should be interpreted to prevent the City from enforcing its ordinances as laws of general applicability.

ARTICLE 4

LOCATION DEVELOPMENT

Section 4.1 ICP stipulates and agrees to fulfill its obligation to make the Minimum Capital Investment described herein within 84 months of the Effective Date.

Section 4.2 ICP will provide the funds for the purchase of the Property as part of ICP's Minimum Capital Investment obligation, and title to the Property will be placed in the name of WEDC. It is the Parties' intent that the Property being owned by WEDC will result in the Property being exempt from property taxation during the term of the Lease pursuant to Section 505.161 of the Act. However, in the event the Bexar County Appraisal District denies exemption or an exemption is otherwise determined to be improper or disallowed, such shall not impact WEDC or the City under this Agreement. Notwithstanding, WEDC shall exercise good faith efforts to secure exemption under Section 505.161 of the Act with the appraisal district.

Section 4.3 <u>Pursuant to Section 4.2 above, if the Property is tax exempt during the term of the Lease and ICP as Tenant is still maintaining control (i.e. any tenant or subtenant of ICP has not yet occupied the space and is vacant) when an event occurs triggering Recapture under Section 3.1A or 3.1B herein, then that portion of the Property so vacant is subject to Recapture.</u>

Section 4.4 Except during the Exemption Period and not including the PILOT Payments in

Section 3.1 C (a) herein, the PILOT Payments shall be paid to the City (or other entity designated by the City or as otherwise designated under this Agreement), in an amount equal to the ad valorem taxes that would have been assessed by the City against the fee simple interest in the Property (including any improvements or additions) as if the property was not exempt from property taxation. These payments will be due by January 15th of the year following the tax year for which they are being paid. In the event the Bexar County Appraisal District does not determine an appraised value for ad valorem property tax purposes for the Property, then the appraised value for ad valorem property tax purposes will be determined in the following manner.

ICP will obtain an appraisal for the Property for ad valorem property tax purposes from a real estate appraiser designated as a member of the Appraisal Institute with an MAI designation to appraise the Real Property and an appraiser who has an ASA designation with the American Society of Appraisers to appraise the tangible personal property ("Qualified Appraisers"). If the City agrees with that appraised value, then that value shall be used for purposes of this Section 4.4. If the City does not agree with that appraised value, then ICP and the City will attempt to agree on Qualified Appraisers to determine the appraised value for ad valorem property tax purposes to be used. If ICP and the City are unable to mutually agree on Qualified Appraisers, then the City will select Qualified Appraisers who will, along with ICP's Qualified Appraisers, select a third set of Qualified Appraisers to assist the appraisers chosen by the Parties to value the property, which value shall be as determined by a majority of such appraisers for each type of property (real and personal).

Section 4.5 The Parties agree to use their best efforts to assert and support the validity of the ad valorem property tax exemption under Section 505.161 of the Act for the Property, provided that the Parties shall not be required to incur other than nominal expenses and attorneys fees in their best efforts.

Section 4.6 ICP shall owe no PILOT Payment under this Agreement for any tax year in which (i) the Property is not exempt from property taxation hereunder and (ii) ICP is required to and has paid any and all ad valorem property taxes for that tax year for the Property.

Section 4.7 ICP shall not permit any tenant, subtenant or assignee to use the Property for any shelter, housing, lodging or processing center for or on behalf of any state or federal agency or contractor working for same, unless expressly authorized by both City and WEDC in their sole and absolute discretion.

ARTICLE 5

MISCELLANEOUS

Section 5.1 This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

Section 5.2 The governing law of this Agreement shall be the law of the State of Texas, without giving effect to any choice-of-law standards that may require the application of the laws of another jurisdiction.

Section 5.3 Venue for any litigation under this Agreement shall be in Bexar County, Texas.

Section 5.4 In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect and for any reason whatsoever, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. In the event any such provision is held to be invalid, illegal or unenforceable, the Parties hereto shall make their best efforts to agree on a provision in substitution for such invalid, illegal or unenforceable provision that is as near in economic benefit as possible to the provision found to be invalid, illegal or unenforceable.

Section 5.5 All communications and notices expressly provided herein shall be sent, (i) by registered first class mail, postage prepaid, (ii) by a nationally recognized overnight courier for delivery on the following business day or (iii) by facsimile (with such facsimile to be confirmed promptly in writing sent by mail or overnight courier as aforesaid), as follows, unless and until changed as described below:

City of Windcrest, Texas:
Mayor of Windcrest
City Hall, 8601 Midcrown
Windcrest, Texas 78239
Fax: (210) 655-8776

With a copy to: Mr. Ryan Henry
Law Offices of Ryan Henry, PLLC
1019 Central Parkway North, Suite 108
San Antonio, Texas 78232
Fax: (210) 569-6494

Windcrest Economic Development Corporation:
Director of Economic Development
8601 Midcrown
Windcrest, Texas 78239
Fax: (210) 655-8776

With a copy to: Mr. Joseph Hoffer
Schulman, Lopez, Hoffer & Adelstein, LLP
845 Proton Road
San Antonio, Texas 78258
Fax: (210) 538-5384

Bexar County, Texas:
Bexar County Judge
101 W. Nueva, 10th Floor
San Antonio, Texas. 78205

With a copy to: Mr. Larry Roberson
Bexar County Criminal District Attorney - Civil Division
101 W. Nueva, 10th Floor
San Antonio, Texas 78205

ICP:
____
____
____
____

With a copy to:
____
____
____
____

However, if a recipient listed above provides written notice to all other recipients, by registered or certified mail, of a change in their address or contact information, that information (and any subsequent changes of which the recipient gives such notice) controls.

Section 5.6 ICP shall pay all costs and expenses incurred in connection with the Project including but not limited to all costs associated with the Project Requirements under Section 2.4 herein including the preparation of any studies or reports, surveys or approvals, this Agreement, the Ground Lease or otherwise.

Section 5.7 ICP may not assign this Agreement without the express written consent of the City and WEDC, which consent may be withheld or refused in the City and WEDC's sole and absolute discretion.

Section 5.8 The Section titles and headings are for convenience only and do not define, modify or limit any of the terms and provisions hereof.

Section 5.9 Any and all representations, warranties, and covenants made by ICP to WEDC, Bexar County or the City contained in this Agreement or in the Lease shall survive the performance of any obligations to which such representations, warranties and covenants relate and shall survive termination of this Agreement or the Lease.

Section 5.10 The term of this Agreement shall commence on the Effective Date and continue in effect until the expiration of the Exemption Period; provided, however, any repayment or recapture obligations by ICP for the benefit of the City and/or WEDC will expressly survive the expiration or termination of this Agreement.

Section 5.11 This Agreement and all terms, provisions and obligations set forth herein shall be binding upon and shall inure to the benefit of the Parties and their successors and assigns and all other state agencies and any other agencies, departments, divisions, governmental entities, public corporations and other entities which shall be successors to each of the Parties or which shall succeed to or become obligated to perform or become bound by any of the covenants, agreements or obligations hereunder of each of the Parties which are parties hereto.

Section 5.12 In the event of a dispute concerning this Agreement or the Parties' obligations hereunder, the Parties shall endeavor in good faith to settle the dispute through negotiation. If the dispute cannot be resolved through negotiation, or another mutually agreeable dispute resolution process, the Parties agree to submit the matter in dispute to mediation. Written notice of the intent to submit a matter to mediation shall be given by the party requesting the same. Only one mediator (selected jointly by the Parties to the dispute) shall be used to mediate the outcome. Such mediation shall be held in Bexar County, Texas or if the Parties mutually agree upon another location, at that other location.

Section 5.13 The Recitals above are hereby incorporated into this Agreement for any and all purposes.

Section 5.14 This document constitutes the final entire agreement between the Parties and supersedes any and all oral or written agreements relating to the subject matter of this Agreement, except for the other agreements expressly contemplated to be entered into under this Agreement, including the Lease.

Section 5.15 ICP shall name the City and WEDC as additional named insureds on all of ICP's insurance policies. Each insurance policy shall also include a waiver of subrogation in favor of the City and WEDC.

ICP shall furnish to the City and WEDC insurance certificates, endorsements, riders and evidence of coverage providing the coverage required under the terms of this Agreement and all associated agreements including but not limited to the Lease with an "A-" or above rated insurance carrier licensed and registered in and/or by the state of Texas. All policies providing coverage shall remain in effect for the entire Term and shall contain a provision stating that no cancellation, non-renewal, or material changes in the policy shall become effective, except upon thirty (30) days' unconditional written notice thereof to the City and WEDC.

Failure to secure the insurance coverages, or the failure to comply fully with any of the insurance provisions of this Agreement as may be necessary to carry out the terms and provisions of this Agreement shall be deemed to be a material breach of this Agreement. The lack of insurance coverage does not reduce or limit ICP's responsibility to indemnify the City and/or WEDC as set forth in this Agreement.

Any and all deductibles and/or premiums associated with the above described insurance policies shall be at the sole cost of, assumed by, for the account of, and at the sole risk of ICP. Neither the City nor WEDC shall obtain, pay for or reimburse ICP for the cost of any insurance.

Section 5.16 ICP COVENANTS AND AGREES TO FULLY EXONERATE, RELEASE, WAIVE, ACQUIT, DISCHARGE, PROTECT, DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY, BEXAR COUNTY AND WEDC AND EACH ENTITY'S ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, VOLUNTEERS, AGENTS AND REPRESENTATIVES, INDIVIDUALLY OR COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, PERSONAL OR BODILY INJURY, DEATH AND PROPERTY DAMAGE, MADE UPON THE CITY, BEXAR COUNTY AND/OR WEDC, DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED IN ANY WAY TO ICP'S ACTIVITIES UNDER THIS AGREEMENT OR THE LEASE, INCLUDING ANY ACTS OR OMISSIONS OF ICP, ANY TENANT, SUBTENANT OR ASSIGNEE, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT, CONTRACTOR OR SUBCONTRACTOR OF ICP, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OR PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS AGREEMENT, ALL WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY AND/OR WEDC UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. ICP SHALL PROMPTLY ADVISE THE CITY, BEXAR COUNTY AND/OR WEDC IN WRITING, AS APPLICABLE, OF ANY CLAIM OR DEMAND AGAINST THE CITY, BEXAR COUNTY AND/OR WEDC OR ICP KNOWN TO ICP, RELATED TO OR ARISING OUT OF ICP'S ACTIVITIES UNDER THIS AGREEMENT OR THE LEASE, AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT ICP'S COST INCLUDING THROUGH ANY INSURANCE POLICY ICP PURCHASES AND MAINTAINS. THE CITY, BEXAR COUNTY AND/OR WEDC SHALL HAVE THE RIGHT, AT ITS OPTION AND AT ITS OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING ICP OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.

Section 5.17 ICP FURTHER AGREES TO DEFEND, AT ITS OWN EXPENSE AND ON BEHALF OF THE CITY, BEXAR COUNTY AND/OR WEDC AND IN THE NAME OF THE CITY, BEXAR COUNTY AND/OR WEDC, ANY CLAIM OR LITIGATION BROUGHT AGAINST THE CITY, BEXAR COUNTY AND/OR WEDC AND ITS ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES, IN CONNECTION WITH ANY SUCH INJURY, DEATH, OR DAMAGE FOR WHICH THIS INDEMNITY SHALL APPLY, AS SET FORTH ABOVE. ICP'S OBLIGATIONS UNDER THIS SUBSECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

Section 5.18 ICP agrees and covenants to cooperate, negotiate in good faith, and to execute such other and further instruments and documents as may be reasonably required by WEDC or the City to fulfill the public purposes provided for and included within this Agreement.

Section 5.19 The undersigned representative of and duly authorized agent for ICP verifies, represents and warrants that:

(a) During the Term of this Agreement, ICP (and any of its contractors, subcontractors, trades, materialmen, assignees, tenants or subtenants) agrees to not knowingly employ any undocumented workers, and, if convicted of a violation under 8 U.S.C. Section 1324a(1), ICP shall be in Default and repay the amount of any grants, Investments, Direct Incentives and/or PILOT Payments received under this Agreement as of the date of such violation within [one hundred twenty (120)] days after the date ICP is notified by the WEDC or City of such violation, plus interest at the rate of [six percent (6.00%)] compounded annually from the date of the violation until paid in full. ICP is not liable for an unknown violation of this Section by a tenant or subcontractor, provided however that identical federal law requirements provided for herein shall be included as part of any lease, sublease, agreement or contract which ICP enters into with any Related Organization, subsidiary, assignee, affiliate, tenant, subtenant, contractor, subcontractor, materialman, trade or franchisee for which any grant, Investment, Direct Incentive or PILOT Payment provided herein will be used.

(b) In accordance with Texas Government Code Section 2552, _ICP is not entered on the list prepared pursuant to Section 2252.152 of the Texas Government Code.

(c) In accordance with Texas Government Code Section 2271, ICP either (i) meets an exemption criteria under Section 2271.002; or (ii) does not boycott Israel and will not boycott Israel during the Term of this Agreement.

(d) In accordance with Texas Government Code Section 2274, ICP either (i) meets an exemption criteria under Section 2274; or (ii) does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association, and will not discriminate against a firearm entity or firearm trade association during the Term of this Agreement.

(e) In accordance with the Texas Government Code Section 2274, ICP either (i) meets an exemption criteria under Section 2274; or (ii) does not boycott energy companies and will not boycott energy companies during the Term of this Agreement.

(*Signatures on following page*)

EXECUTED on the ____ day of ____________, 2023.

City of Windcrest, Texas

By: ______________________________

Name: ______________________________

Title: ______________________________

City of Windcrest Economic Development Corporation

By: ______________________________

Name: ______________________________

Title: ______________________________

Industrial Commercial Properties, LLC

By: ______________________________

Name: ______________________________

Title: ______________________________

(*Signatures continue on following page*)

Bexar County, Texas

By: ______________________________

Name: ______________________________

Title: ______________________________

For Bexar County:

APPROVED AS TO LEGAL FORM:

By: ___________________________
Larry Roberson
Bexar County Assistant Criminal District Attorney – Civil Division

APPROVED AS TO FINANCIAL CONTACT:

By: ___________________________
Leo S. Caldera, CIA, CGAP
County Auditor

By: ___________________________
David Smith
County Manager