

**AGREEMENT FOR LIMITATION ON APPRAISED VALUE
OF PROPERTY FOR SCHOOL DISTRICT
MAINTENANCE AND OPERATIONS TAXES**

by and between

HILLSBORO INDEPENDENT SCHOOL DISTRICT

and

IKO SOUTHWEST INC.

(Texas Taxpayer ID # 10206360074)

TEXAS COMPTROLLER APPLICATION NUMBER 1006

Dated

November 10, 2014

WHEREAS, the Board of Trustees has reviewed and carefully considered the economic impact evaluation and certificate for limitation on appraised value submitted by the Texas Comptroller's Office pursuant to Section 313.026 of the Texas Tax Code;

WHEREAS, on November 10, 2014, the Board of Trustees conducted a public hearing on the Application at which it solicited input into its deliberations on the Application from all interested parties within the District;

WHEREAS, on November 10, 2014, the Board of Trustees made factual findings pursuant to Section 313.025(f) of the Texas Tax Code, including, but not limited to findings that: (i) the information in the Application is true and correct; (ii) Applicant is eligible for the Limitation on Appraised Value of Applicant's Qualified Property; (iii) the Project proposed by Applicant is reasonably likely to generate tax revenue in an amount sufficient to offset District's maintenance and operations ad valorem tax revenue lost as a result of the agreement before the 25th anniversary of the beginning of the Limitation Period; (iv) the limitation on appraised value is a determining factor in Applicant's decision to invest capital and construct the Project in this State; and (v) this Agreement is in the best interest of District and the State of Texas;

WHEREAS, on November 10, 2014, the Texas Comptroller's Office approved the form of this Agreement for a Limitation on Appraised Value of Property for School District Maintenance and Operations Taxes; and

WHEREAS, November 10, 2014, the Board of Trustees approved the form of this Agreement for a Limitation on Appraised Value of Property for School District Maintenance and Operations Taxes, and authorized the Board President and Secretary to execute and deliver such Agreement to the Applicant; and

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and agreements herein contained, the Parties agree as follows:

ARTICLE I **DEFINITIONS**

Section 1.1 DEFINITIONS.

Wherever used herein, the following terms shall have the following meanings, unless the context in which used clearly indicates another meaning. Words or terms defined in 34 TEX. ADMIN. CODE §9.1051 and not defined in this Agreement shall have the meanings provided by 34 TEX. ADMIN. CODE §9.1051.

"Act" means the Texas Economic Development Act set forth in Chapter 313 of the Texas Tax Code, as amended.

"Agreement" means this Agreement, as the same may be modified, amended, restated, amended and restated, or supplemented as approved pursuant to Section 10.2.

"Applicable School Finance Law" means Chapters 41 and 42 of the TEXAS EDUCATION CODE, the Texas Economic Development Act (Chapter 313 of the TEXAS TAX CODE), Chapter 403, Subchapter M, of the Texas Government Code applicable to District, and the Constitution and general laws of the State applicable to the school districts of the State, including specifically, the applicable rules and regulations of the agencies of the State having jurisdiction over any matters relating to the public school systems and school districts of the State, and judicial decisions construing or interpreting any of the above. The term also includes any amendments or successor statutes that may be adopted in the future that could impact or alter the calculation of Applicant's ad valorem tax obligation to District, either with or without the limitation of property values made pursuant to this Agreement.

"Applicant" means IKO Southwest, Inc., (Texas Taxpayer ID # 10206360074), the company listed in the Preamble of this Agreement and that listed as the Applicant on the Application as of the Application Approval Date. The term "Applicant" shall also include Applicant's assigns and successors-in-interest as approved according to Section 10.2 of this Agreement.

"Applicant's Qualified Investment" means the Qualified Investment of the Applicant during the Qualifying Time Period and as more fully described in Section 3.3 of this Agreement.

"Application" means the Application for Appraised Value Limitation on Qualified Property (Chapter 313, Subchapter B or C, of the Texas Tax Code) filed with District by Applicant on April 7, 2014. The term includes all forms required by Comptroller, the schedules attached thereto, and all other documentation submitted by Applicant for the purpose of obtaining an Agreement with District. The term also includes all amendments and supplements thereto submitted by Applicant.

"Application Approval Date" means the date that the Application is approved by the Board of Trustees of District and as further identified in Section 2.3.B of this Agreement.

"Application Review Start Date" means the later date of either the date on which District issues its written notice that Applicant has submitted a completed application or the date on which Comptroller issues its written notice that Applicant has submitted a completed application and as further identified in Section 2.3.A of this Agreement.

"Appraised Value" shall have the meaning assigned to such term in Section 1.04(8) of the Texas Tax Code.

"Appraisal District" means the Hill County Appraisal District.

"Board of Trustees" means the Board of Trustees of the Hillsboro Independent School District.

"Comptroller" means the Texas Comptroller of Public Accounts, or the designated representative of the Texas Comptroller of Public Accounts acting on behalf of Comptroller.

"Comptroller's Rules" means the applicable rules and regulations of Comptroller set forth in Chapter 34 Texas Administrative Code, Chapter 9, Subchapter F, together with any court or administrative decisions interpreting same.

"County" means Hill County, Texas.

"District" or "School District" means the Hillsboro Independent School District, being a duly authorized and operating school district in the State, having the power to levy, assess, and collect ad valorem taxes within its boundaries and to which Subchapter C of the Act applies. The term also includes any successor independent school district or other successor governmental authority having the power to levy and collect ad valorem taxes for school purposes on Applicant's Qualified Property or the Applicant's Qualified Investment.

"Final Termination Date" means the last date of the final year in which Applicant is required to Maintain Viable Presence and as further identified in Section 2.3.E of this Agreement.

"Force Majeure" means those causes generally recognized under Texas law as constituting impossible conditions. Each party must inform the other in writing with proof of receipt within three business days of the existence of such force majeure or otherwise waive this right as a defense.

"Land" means the real property described on **EXHIBIT 2**, which is attached hereto and incorporated herein by reference for all purposes.

"Maintain Viable Presence" means (i) the development, construction and operation during the term of this Agreement of the facility or facilities for which the tax limitation is granted, as the same may from time to time be expanded, upgraded, improved, modified, changed, remodeled, repaired, restored, reconstructed, reconfigured, and/or reengineered; (ii) the retention during the term of this Agreement of the number of New Qualifying Jobs set forth in its Application by Applicant; (iii) and continue the average weekly wage paid by Applicant for all Non-Qualifying Jobs created by Applicant that exceeds the county average weekly wage for all jobs in the county where the administrative office of District is maintained.

"M&O Amount" shall have the meaning assigned to such term in Section 3.2 of the Agreement.

"Maintenance and Operations Revenue" or "M&O Revenue" means (i) those revenues which District receives from the levy of its annual ad valorem maintenance and operations tax pursuant to Section 45.002 of the Texas Education Code and Article VII § 3 of the Texas Constitution, plus (ii) all State revenues to which the District is or may be entitled under Chapter 42 of the Texas Education Code or any other statutory provision as well as any amendment or successor statute to these provisions, plus (iii) any indemnity payments received by the District

under other agreements similar to this Agreement to the extent that such payments are designed to replace District M&O Revenue lost as a result of such similar agreements, less (iv) any amounts necessary to reimburse the State of Texas or another school district for the education of additional students pursuant to Chapter 41 of the Texas Education Code.

“Market Value” shall have the meaning assigned to such term in Section 1.04(7) of the TEXAS TAX CODE.

“New Qualifying Jobs” means the total number of jobs to be created and maintained by Applicant after the Application Approval Date in connection with the Project which is the subject of its Application that meet the criteria of qualifying job as defined in Section 313.021(4) of the TEXAS TAX CODE.

“Qualified Investment” has the meaning set forth in Chapter 313 of the Texas Tax Code, as interpreted by Comptroller’s Rules, as these provisions existed on the Application Review Start Date.

“Non-Qualifying Jobs” means the number of New Non-Qualifying Jobs, as defined in 34 TAC §9.0151, to be created and maintained by the Applicant after the Application Approval Date in connection with the Project which is the subject of its Application.

“Qualified Property” has the meaning set forth in Chapter 313 of the Texas Tax Code and as interpreted by Comptroller’s Rules and the Texas Attorney General, as these provisions existed on the date of the Application is approved by District,

“Qualifying Time Period” means the period that begins on the date of approval of this Agreement by District’s Board of Trustees and ends on December 31st of the second Tax Year that begins after such date of approval as is defined in Section 313.021(4)(A) of the Texas Tax Code and during which Applicant shall make investment on the land where the qualified property in the amount required by the Act, the Comptroller’s rules, and this Agreement and as further identified in Section 2.3.C of this Agreement.

“Revenue Protection Amount” means the amount calculated pursuant to Section 3.2 of this Agreement.

“State” means the State of Texas.

“Substantive Document” means a document or other information or data in electronic media determined by the Comptroller to substantially involve or include information or data significant to an application, the evaluation or consideration of an application, or the agreement or implementation of an agreement for limitation of appraised value pursuant to Chapter 313 of the Texas Tax Code. The term includes, but is not limited to, any application requesting a limitation on appraised value and any amendments or supplements, any economic impact evaluation made in connection with an application, any agreement between applicant and the

school district and any subsequent amendments or assignments, and any school district written finding or report filed with the comptroller as required under this subchapter.

“Supplemental Payment” has the meaning as set forth in Article VI of this Agreement.

“Tax Limitation Amount” means the maximum amount which may be placed as the Appraised Value on Applicant’s Qualified Property for each tax year of the Tax Limitation Period of this Agreement pursuant to Section 313.054 [or 313.027] of the Texas Tax Code.

“Tax Limitation Period” means the Tax Years for which the Applicant’s Qualified Property is subject to the Tax Limitation Amount and as further identified in Section 2.3.D of this Agreement.

“Tax Year” shall have the meaning assigned to such term in Section 1.04(13) of the Texas Tax Code (*i.e.*, the calendar year).

“Taxable Value” shall have the meaning assigned to such term in Section 1.04(10) of the TEXAS TAX CODE.

“Texas Education Agency Rules” means the applicable rules and regulations adopted by the Texas Commissioner of Education in relation to the administration of Chapter 313 of the Texas Tax Code, which are set forth at 19 Tex. Admin. Code, Part 2, together with any court or administrative decisions interpreting same.

ARTICLE II

AUTHORITY, PURPOSE AND LIMITATION AMOUNTS

Section 2.1. AUTHORITY. This Agreement is executed by District as its written agreement with Applicant pursuant to the provisions and authority granted to District in Section 313.027 of the TEXAS TAX CODE.

Section 2.2. PURPOSE. In consideration of the execution of and subsequent performance of the terms and obligations by Applicant pursuant to this Agreement, identified in Section 2.5 and 2.6 and as more fully specified in this Agreement, the value of Applicant’s Qualified Property listed and assessed by the County Appraiser for District’s operation and maintenance ad valorem property tax shall be the Tax Limitation Amount as set forth in Section 2.4 of this Agreement during the Tax Limitation Period.

Section 2.3. TERM OF THE AGREEMENT.

A. The Application Review Start Date for this Agreement is June 11, 2014, which will determine Applicant’s Qualified Property and applicable wage standard.

B. The Application approval date for this Agreement is November 10, 2014, which will determine the Qualifying Time Period.

C. The Qualifying Time Period for this Agreement:

1. Starts on November 10, 2014 Application Approval Date; and

2. Ends on December 31, 2016; being the second complete tax year after the effective date of this agreement]

D. The Tax Limitation Period for this Agreement:

1. Starts on January 1, 2017
2. Ends on December 31, 2026.

E. The Final Termination Date for this Agreement is December 31, 2031.

F. This Agreement, and the obligations and responsibilities created by this Agreement, shall be and become effective on the Application Approval Date identified in Subsection B. This Agreement, and the obligation and responsibilities created by this Agreement, terminate on the Final Termination Date identified in Subsection E, unless extended by the express terms of this Agreement.

2.4. TAX LIMITATION. So long as Applicant makes the Qualified Investment as defined by Section 2.5 below, during the Qualifying Time Period, and unless this Agreement has been terminated as provided herein before such Tax Year, on January 1 of each Tax Year of the Tax Limitation Period, the Appraised Value of the Applicant's Qualified Property for the District's maintenance and operations ad valorem tax purposes shall not exceed the lesser of:

- A. The Market Value of the Applicant's Qualified Property; or
- B Twenty Million Dollars (\$20,000,000.00) .

This Tax Limitation Amount is based on the limitation amount for the category that applies to the District on the effective date of this Agreement, as set out by Section 313.052 of the TEXAS TAX CODE.

2.5. QUALIFIED INVESTMENT FOR TAX LIMITATION ELIGIBILITY. In order to be eligible and entitled to receive the value limitation identified in 2.4 for the Qualified Property identified in Article III, Applicant shall:

- A. have completed Qualified Investment in the amount of \$20,000,000.00 by the end of the Qualifying Time Period;
- B. have created the number of Qualifying Jobs specified in, and in the time period specified on, Schedule C of the Application; and
- C. be paying the average weekly wage of all jobs in the county in which District's administrative office is located for all non-qualifying jobs created by Applicant.

2.6. TAX LIMITATION OBLIGATIONS. In order to receive and maintain the limitation authorized by 2.4, Applicant shall:

- A. provide payments to District sufficient to protect the future District revenues through payment of revenue offsets and other mechanisms as more fully described in Article IV;
- B. provide such supplemental payments as more fully specified in Article VI; and
- C. create and Maintain Viable Presence on and/or with the Qualified Property and perform additional obligations as more fully specified in Article VII of this Agreement.

ARTICLE III **QUALIFIED PROPERTY**

SECTION 3.1. LOCATION WITHIN ENTERPRISE OR REINVESTMENT ZONE. At the time of making the Qualified Investment and during the period starting with the Application Approval

Date and ending on the Final Termination Date, the Land is and shall be within an area designated either as an enterprise zone, pursuant to Chapter 2303 of the Texas GOVERNMENT CODE, or a reinvestment zone, pursuant to Chapter 311 or 312 of the TEXAS TAX CODE. The legal description of such zone is attached to this Agreement as **EXHIBIT 1** and is incorporated herein by reference for all purposes.

Section 3.2. LOCATION OF QUALIFIED PROPERTY AND INVESTMENT. The Land on which the Qualified Property shall be located and on which the Qualified Investment shall be made is described on **EXHIBIT 2** which is attached hereto and incorporated herein by reference for all purposes. The Parties expressly agree that the boundaries of the Land may not be materially changed from its configuration described in **EXHIBIT 2** unless amended pursuant to the provisions of Section 10.2 of this Agreement.

Section 3.3. DESCRIPTION OF QUALIFIED PROPERTY. The Qualified Property that is subject to the Tax Limitation Amount is described in **EXHIBIT 3**, which is attached hereto and incorporated herein by reference for all purposes. Property which is not specifically described in **EXHIBIT 3** shall not be considered by the District or the Appraisal District to be part of the Applicant's Qualified Property for purposes of this Agreement, unless by official action the Board of Trustees provides that such other property is a part of the Applicant's Qualified Property for purposes of this Agreement in compliance with Section 313.027(e) of the Texas Tax Code, the Comptroller's rules, and Section 10.2 of this Agreement,.

Section 3.4. CURRENT INVENTORY OF QUALIFIED PROPERTY. If at any time after the Application Approval Date there is a material change in the Qualified Property located on the Land described in **EXHIBIT 2**; or, upon a reasonable request of District, Comptroller, the Appraisal District, or the State Auditor's Office, Applicant shall provide to District, Comptroller, the Appraisal District or the State Auditor's Office a specific and detailed description of the tangible personal property, buildings, or permanent, nonremovable building components (including any affixed to or incorporated into real property) on the Land to which the value limitation applies including maps or surveys of sufficient detail and description to locate all such described property on the Land.

Section 3.5. QUALIFYING USE. Applicant's Qualified Property described above in Section 2.3 qualifies for a tax limitation agreement under Section 313.024(b) (1) of the Texas Tax Code as a manufacturing facility.

ARTICLE IV

PROTECTION AGAINST LOSS OF FUTURE DISTRICT REVENUES

Section 4.1. INTENT OF THE PARTIES. Subject to the limitations contained in this Agreement (including Section 7.1, below), it is the intent of the Parties that the District shall, in accordance with the provisions of Texas Tax Code §313.027(f)(1), be compensated by the Applicant for: (i) any monetary loss that the District incurs in its M&O Revenue; or (ii) for any new uncompensated operating cost incurred as a sole and direct result of, or on account of entering into, this Agreement, after taking into account any payments to be made under this Agreement. Subject to the limitations contained in this Agreement, it is the intent of the Parties that the risk of any negative financial consequence to the District in making the decision to enter into this

Agreement will be borne by the Applicant and not by the District, and paid by the Applicant to the District in addition to any and all support due under Article VI. Consistent with this intent and prior to limitation on appraised value and prior to Applicant receiving any tax benefit hereunder, at any time on or before the end of the Qualifying Time Period on December 31, 2016, Applicant may terminate this Agreement upon written notice to the District and the same shall be null and void and Applicant shall have no further obligations hereunder.

Section 4.2. CALCULATING THE AMOUNT OF LOSS OF REVENUES BY THE DISTRICT.

The amount to be paid by the Applicant to compensate the District for loss of M&O Revenue resulting from, or on account of, this Agreement for each year during the term of this Agreement is referred to herein as the M&O Amount, and it shall be determined in compliance with the Applicable School Finance Law in effect for such year and according to the following formula:

(a) The M&O Amount owed by the Applicant to District means the Original M&O Revenue *minus* the New M&O Revenue;

Where:

- (i) "Original M&O Revenue" means the total State and local Maintenance & Operations Revenue that the District would have received for the school year under the Applicable School Finance Law had this Agreement not been entered into by the Parties and the Qualified Property and/or Qualified Investment been subject to the ad valorem maintenance and operations tax at the tax rate actually adopted by the District for the applicable year.
- (ii) "New M&O Revenue" means the total State and local Maintenance & Operations Revenue that the District actually received for such school year, after all adjustments have been made to M&O Revenue because of any portion of this Agreement.

(b) In making the calculations required by this Section 4.2:

- (i) The Taxable Value of property for each school year will be determined under the Applicable School Finance Law.
- (ii) For purposes of this calculation, the tax collection rate on the Applicant's Qualified Property and/or the Applicant's Qualified Investment will be presumed to be one hundred percent (100%).
- (iii) If, for any year of this Agreement, the difference between the Original M&O Revenue and the New M&O Revenue as calculated under this Section 4.2 results in a negative number, the negative number will be considered to be zero.

- (iv) All calculations made under Section 4.2(B)(ii) for the Tax Limitation Period will reflect the Tax Limitation Amount for such year.
- (v) All calculations made under this Section 4.2 shall be made by a methodology which isolates the full M&O Revenue impact caused by this Agreement. The Applicant shall not be responsible to reimburse the District for other revenue losses created by other agreements, or on account of or otherwise arising out of any other factors not contained in this Agreement.

Section 4.3 REVENUE PROTECTION PAYMENT LIMITATION. Notwithstanding any other provision of this Agreement to the contrary, in the event the payment due to District under Section 4.2 of this Agreement for the 2016-2017 school year exceeds the \$787,106 District revenue loss forecast by Moak Casey in support of the Application by more than 10% (*i.e.*, is more than \$865,817), such excess shall be payable by Applicant to District in four equal annual payments on the next four consecutive due dates defined under Section 4.7 of this Agreement.

Section 4.4. COMPENSATION FOR LOSS OF OTHER REVENUES. In addition to the amounts determined pursuant to Section 4.2 above, the Applicant, on an annual basis, shall also indemnify and reimburse the District for the following:

- (a) All non-reimbursed increases in District costs paid to the Appraisal District caused by increased appraised values arising solely from the Project.
- (b) On an annual basis, Applicant shall also indemnify and reimburse the District for all non-reimbursed costs, certified by the District's external auditor to have been incurred by the District for extraordinary education-related expenses related to the Project that are not directly funded in state aid formulas, including expenses for the purchase of portable classrooms and the hiring of additional classroom personnel to accommodate a temporary increase in student enrollment attributable to the Project. Applicant shall have the right to contest the findings of the District's external auditor pursuant to Section 4.8 herein.

Section 4.5. CALCULATIONS TO BE MADE BY THIRD PARTY. All calculations under this Agreement shall be made annually by a competent and qualified independent third party (the "Third Party") selected each year by the District with consent of the Applicant, which shall not be unreasonably withheld.

Section 4.6. DATA USED FOR CALCULATIONS. The calculations under this Agreement shall be initially based upon the valuations that are placed upon all taxable property in the District, including Applicant's Qualified Investment and/or the Applicant's Qualified Property by the Appraisal District in its annual certified tax roll submitted to the District pursuant to Texas Tax Code Section 26.01 on or about July 25 of each year of this Agreement. Immediately upon receipt of the valuation information by the District, the District shall submit the valuation information to

the Third Party selected under Section 4.4. The certified tax roll data shall form the basis of the calculation of any and all amounts due under this Agreement. All other data utilized by the Third Party to make the calculations contemplated by this Agreement shall be based upon the best available current estimates. The data utilized by the Third Party shall be adjusted from time to time by the Third Party to reflect actual amounts, subsequent adjustments by the Appraisal District to the District's certified tax roll, or any other changes in student counts, tax collections, or other data.

Section 4.7. DELIVERY OF CALCULATIONS. On or before November 1 of each year for which this Agreement is effective, the Third Party appointed pursuant to Section 4.4 of this Agreement shall forward to the Parties the calculations required under Sections 4.2 and/or 4.3 of this Agreement in sufficient detail to allow the Parties to understand the manner in which the calculations were made. The Third Party shall simultaneously submit its invoice for fees for services rendered to the Parties, if any fees are being claimed. Upon reasonable prior notice, the employees and agents of the Applicant shall have access, at all reasonable times, to the Third Party's offices, personnel, books, records, and correspondence pertaining to the calculation and fee for the purpose of verification. The Third Party shall maintain supporting data consistent with generally accepted accounting practices, and the employees and agents of the Applicant shall have the right to reproduce and retain for purpose of audit, any of these documents. The Third Party shall preserve all documents pertaining to the calculation and fee for a period of five (5) years after payment. The Applicant shall not be liable for any of Third Party's costs resulting from an audit of the Third Party's books, records, correspondence, or work papers pertaining to the calculations contemplated by this Agreement or the fee paid by the Applicant to the Third Party pursuant to Section 4.7, if such fee is timely paid.

Section 4.8. PAYMENT BY APPLICANT. The Applicant shall pay any amount determined to be due and owing to the District under this Agreement on or before the January 31 of the year next following the tax levy for each year for which this Agreement is effective. By such date, the Applicant shall also pay any actual amount billed by the Third Party for all calculations pursuant to Section 4.6 of this Agreement, plus any reasonable and necessary legal expenses paid by the District to its attorneys, auditors, or financial consultants for: (i) the preparation and filing of any financial reports required by any state agency; (ii) required disclosures; or (iii) other reimbursement applications filed with or sent to the State of Texas which are, or may be, required under the terms or because of the execution of this Agreement. The Applicant shall not be responsible for the payment of expenses under this Article IV for any year in excess of Ten Thousand Dollars (\$10,000.00).

Section 4.9. RESOLUTION OF DISPUTES. Should the Applicant disagree with the calculations presented pursuant to this Article IV, the Applicant may appeal the findings, in writing, to the Third Party within thirty (30) days of receipt of the calculation. Within thirty (30) days of receipt of the Applicant's appeal, the Third Party will issue, in writing, a final determination of the calculations. Thereafter, the Applicant may, in writing, appeal the Third Party's final determination to the District's Board of Trustees within thirty (30) days of the final determination of the calculations. If Applicant disagrees with a determination by the Board of Trustees as to the

amounts due under this Article IV, it may mediate such determination pursuant to the dispute resolution procedures set forth in Section 9.5 of this Agreement.

Section 4.10. EFFECT OF PROPERTY VALUE APPEAL OR OTHER ADJUSTMENT. In the event that, at the time the Third Party selected under Section 4.4 makes its calculations under this Agreement, the Applicant has appealed the taxable values placed by the Appraisal District on the Qualified Property, and the appeal of the appraised values are unresolved, the Third Party shall base its calculations upon the values initially placed upon the Qualified Property by the Appraisal District.

In the event that the result of an appraisal appeal or for any other reason, the Taxable Value of the Applicant's Qualified Investment and/or the Applicant's Qualified Property is changed by the Appraisal District, once the determination of a new value becomes final, the Parties shall immediately notify the Third Party who shall immediately issue new calculations for the applicable year or years. In the event the new calculations result in the change of any amount payable by the Applicant under this Agreement, the party from whom the adjustment is payable shall remit such amounts to the counter-party within thirty (30) days of the receipt of the new calculations from the Third Party.

Section 4.11. EFFECT OF STATUTORY CHANGES. Notwithstanding any other provision in this Agreement, but subject to the limitations contained in Section 7.1, in the event that by virtue of statutory changes to the Applicable School Finance Law, administrative interpretations by the Comptroller, Commissioner of Education, or the Texas Education Agency, or for any other reason attributable to statutory change, the District will receive less M&O Revenue, or, if applicable, will be required to increase its payment of funds to the State, or to other governmental entities including the Appraisal District, because of its participation in this Agreement, the Applicant shall make payments to the District, that are necessary to offset any negative impact on the District as a result of its participation in this Agreement. Such calculation shall take into account any adjustments to the amount calculated for the current fiscal year that should be made in order to reflect the actual impact on the District. The District shall use reasonable efforts to mitigate the economic effects of any law changes described in this Section 4.10, and if Applicant disagrees with the calculation of adverse impact described in this Section it shall have the right to appeal such calculations pursuant to Section 9.5 of this Agreement.

ARTICLE V
PAYMENT OF EXTRAORDINARY EDUCATION RELATED EXPENSES

[ARTICLE LEFT INTENTIONALLY BLANK]

ARTICLE VI
SUPPLEMENTAL PAYMENTS
TECHNICAL TRAINING PROGRAM

SECTION 6.1. TECHNICAL TRAINING PROGRAMS AS SUPPLEMENTAL PAYMENT. AS AN INTEGRAL PART OF THIS AGREEMENT, AND IN CONFORMANCE WITH THE REQUIREMENTS OF SECTION 28.002(G-1) OF THE TEXAS EDUCATION CODE, THE DISTRICT WILL OFFER COURSES OR OTHER ACTIVITIES, INCLUDING AN APPRENTICESHIP OR TRAINING PROGRAM OFFERING HOURS NEEDED FOR ITS STUDENTS TO OBTAIN AN INDUSTRY-RECOGNIZED CREDENTIAL OR CERTIFICATE IN ONE OR MORE AREAS OF EDUCATION RELATED TO THE OPERATIONS UNDERTAKEN BY APPLICANT UNDER THIS AGREEMENT. IN DEVELOPING THESE COURSES THE DISTRICT WILL, PURSUANT TO SECTION 28.002(G-1)(1) OF THE TEXAS EDUCATION CODE PARTNER WITH APPLICANT TO DEVELOP SUCH COURSES OR OTHER ACTIVITIES AS WILL ALLOW STUDENTS TO ENTER:

- (a) a career or technology training program in the District's region of the state;
- (b) an institution of higher education without remediation;
- (c) an apprenticeship training program; or,
- (d) an internship required as part of accreditation toward an industry-recognized credential or certificate for course credit.

Applicant agrees that during the entire term of this Agreement, and in accordance with Section 28.002(g-1)(1) of the Texas Education Code, it will provide support (including annual financial or in-kind donations of up to \$5,000, but in no event to exceed the cap allowed by Section 313.027(i) of the Texas Tax Code) for District-operated technical training programs for the education and development of technical skills necessary for individuals seeking employment in the manufacturing industry in which Applicant participates (such support shall be referred to in this Agreement as the “*supplemental payment*”). Such support shall consist of:

- (i) Conferring with the District for the purpose of identifying opportunities for employees of Applicant to participate in technical training programs operated by the District for the benefit of its students, and programs sponsored by the District;
- (ii) Disseminating technical information, at conferences with Applicant’s employees for the purpose of developing curriculum and program specifications to enhance the relevance of the District’s training program;

(iii) Maintaining a Manufacturing Internship (or “*Internship*”) with the objective to familiarize the students with various career choices available in a manufacturing facility and provide exposure to working in a manufacturing environment, as follows:

(A) Applicant shall offer one Internship in each academic term (i.e. – school semester) of the year, up to a maximum of 3 Internships per calendar year;

(B) Eligibility: high school students in their senior year, minimum 18 years old, who have a serious interest in manufacturing, who have high marks in Math and Sciences, and who have been highly recommended by their school principal;

(C) Each Internship shall accommodate 6 to 8 students;

(D) Each Internship shall be for a total of 6-8 hours, to be spread over one or multiple days, at Applicant’s discretion. The exact dates and times for each Internship shall be determined mutually by Applicant and the District;

(E) Each student, their parents and the District shall sign an agreement with Applicant for the Internship that will cover topics such as expected behavior, safety rules, confidentiality (e.g. – no photos), liability, etc. The agreement shall be written by Applicant;

(F) Example of what a sessions might cover:

1. Overview of the factory and of the products that are manufactured, using diagrams, product samples, etc.

2. Tour of the plant, control rooms, Lab/QC programs, maintenance areas

3. Sessions with some members of the Plant Leadership Team

4. Shipping, receiving, warehouse, and storerooms

5. Administrative functions – purchasing, HSE, etc.

6. Education and experience required for general positions

(G) Applicant shall have sole authority to design, manage, and operate the Internship, including all of its agreements, understandings, content and structure. Applicant shall have the sole authority to make any changes to the Internship as it deems appropriate.

- (H) Applicant will start offering the Internship in the second academic session following the date that Applicant's Project has become operational.
- (iv) Considering qualified graduates of the District's technical training program and/or qualified graduates of programs sponsored by the District for available employment positions with Applicant.

Throughout the entire term of this Agreement, Applicant shall not be required to make any payments to the District pursuant to this Article VI.

SECTION 6.2. SUPPLEMENTAL PAYMENT LIMITATION.

A. Notwithstanding the foregoing, the total annual supplement payment made pursuant to this article shall:

- i. not exceed in any calendar year of this Agreement an amount equal to the greater of One Hundred Dollars (\$100.00) per student per year in average daily attendance, as defined by Section 42.005 of the TEXAS EDUCATION CODE, or Fifty Thousand Dollars (\$50,000.00) per year; and
- ii. only be made during the period starting the first year of the Qualifying Time Period and ending December 31 of the third year following the end of the Tax Limitation Period.

B. This limitation does not apply to amounts described by Section 313.027(f)(1)-(2) of the TEXAS TAX CODE as implemented in Articles IV and V of this Agreement.

C. For purposes of this Agreement, the amount of the Annual Limit shall be **\$186,000** based upon the District's 2014-2015 Average Daily Attendance of 1,860, rounded to the whole number.

ARTICLE VII
ANNUAL LIMITATION OF PAYMENTS BY APPLICANT

SECTION 7.1 ANNUAL LIMITATION. Notwithstanding anything contained in this Agreement to the contrary, and with respect to each Tax Year of the Tax Limitation Period, in no event shall (i) the sum of the maintenance and operations ad valorem taxes paid by Applicant to District for such Tax Year, plus the sum of all payments otherwise due from Applicant to District under Articles IV, V, and VI of this Agreement with respect to such Tax Year, exceed (ii) the amount of the maintenance and operations ad valorem taxes that Applicant would have paid to District for such Tax Year (determined by using District's actual maintenance and operations tax rate for such Tax Year) if the Parties had not entered into this Agreement. The calculation and comparison of the amounts described in clauses (i) and (ii) of the preceding sentence shall be included in all calculations made pursuant to Section 4.2 of this Agreement, and in the event the sum of the amounts described in said clause (i) exceeds the amount described in said clause (ii), then the payments otherwise due from Applicant to District under Articles IV, V, and VI shall be reduced until such excess is eliminated.

Section 7.2 OPTION TO TERMINATE AGREEMENT. Section 7.2. OPTION TO TERMINATE AGREEMENT. In the event that any payment otherwise due from Applicant to District under Article IV, Article V, and/or Article VI of this Agreement with respect to a Tax Year is subject to reduction in accordance with the provisions of Section 7.1 above, then the Applicant shall have the option to terminate this Agreement. Applicant may exercise such option to

terminate this Agreement by notifying District of its election in writing not later than the July 31 of the year next following the Tax Year with respect to which a reduction under Section 7.1 is applicable. Any termination of this Agreement under the foregoing provisions of this Section 7.2 shall be effective immediately prior to the second Tax Year next following the Tax Year in which the reduction giving rise to the option occurred.

Section 7.3. EFFECT OF OPTIONAL TERMINATION. Upon the exercise of the option to terminate pursuant to Section 7.2, this Agreement shall terminate and be of no further force or effect; provided, however, that:

A. the Parties respective rights and obligations under this Agreement with respect to the Tax Year or Tax Years (as the case may be) through and including the Tax Year during which such notification is delivered to District, shall not be impaired or modified as a result of such termination and shall survive such termination unless and until satisfied and discharged; and

B. the provisions of this Agreement regarding payments, records and dispute resolution shall survive the termination or expiration dates of this Agreement.

ARTICLE VIII

ADDITIONAL OBLIGATIONS OF APPLICANT

Section 8.1. APPLICANT'S OBLIGATION TO MAINTAIN VIABLE PRESENCE. In order to receive and maintain the limitation authorized by 2.4 in addition to the other obligations required by this Agreement, Applicant shall Maintain Viable Presence in District commencing at the start of the Tax Limitation Period through the Final Termination Date of this Agreement. Notwithstanding anything contained in this Agreement to the contrary, Applicant shall not be in breach of, and shall not be subject to any liability for failure to Maintain Viable Presence to the extent such failure is caused by Force Majeure, provided Applicant makes commercially reasonable efforts to remedy the cause of such Force Majeure. The Final Termination Date will only be extended for the mutually agreed length of the Force Majeure.

Section 8.2. REPORTS. In order to receive and maintain the limitation authorized by 2.4 in addition to the other obligations required by this Agreement, Applicant shall submit the following reports completed by Applicant to the satisfaction of Comptroller on the dates indicated on the form and starting on the first such due date after the Application Approval Date:

A. The Annual Eligibility Report, Form 50-772 located at Comptroller website <http://www.window.state.tx.us/taxinfo/taxforms/50-772.pdf>;

B. The Biennial Progress Report, Form 50-773, located at Comptroller website <http://www.window.state.tx.us/taxinfo/taxforms/50-773.pdf> ; and

C. The Job Creation Compliance Report, Form 50-825, located at the Comptroller website http://www.texasahead.org/tax_programs/chapter313/forms.php.

Section 8.3. COMPTROLLER'S ANNUAL REPORT ON CHAPTER 313 AGREEMENTS. During the term of this Agreement, both Parties shall provide Comptroller with all information reasonably necessary for Comptroller to assess performance under this Agreement for the purpose of issuing Comptroller's report, as required by Section 313.032 of the Texas Tax Code.

Section 8.4. DATA REQUESTS. During the term of this Agreement, and upon the written request of District, the State Auditor's Office, or Comptroller, the Applicant shall provide the requesting party with all information reasonably necessary for the requesting party to determine whether the Applicant is in compliance with its obligations, including, but not limited to, any employment obligations which may arise under this Agreement.

Section 8.5. SITE VISITS AND RECORD REVIEW. Applicant shall allow authorized employees of District, the Comptroller, the Appraisal District, and/or the State Auditor's Office to have access to Applicant's Qualified Property and/or business records, in accordance with Section 22.07 of the TEXAS TAX CODE, from the Application Review Start Date through the Final Termination Date, in order to inspect the Project to determine compliance with the terms hereof or as necessary to properly appraise the Taxable Value of Applicant's Qualified Property.

A. All inspections will be made at a mutually agreeable time after the giving of not less than forty-eight (48) hours prior written notice, and will be conducted in such a manner so as not to unreasonably interfere with either the construction or operation of Applicant's Qualified Property.

B. All inspections may be accompanied by one or more representatives of Applicant, and shall be conducted in accordance with Applicant's safety, security, and operational standards. Notwithstanding the foregoing, nothing contained in this Agreement shall require the Applicant to provide District, Comptroller, or the Appraisal District with any technical or business information that is proprietary, a trade secret or is subject to a confidentiality agreement with any third party.

Section 8.6. RIGHT TO AUDIT; SUPPORTING DOCUMENTS; INDEPENDENT AUDITS.

This Agreement is subject to review and audit by the State Auditor pursuant to Section 2262.003 of the Texas Government Code and Section 331.010 (a) of the Texas Tax Code, and the following requirements:

A. District and Applicant shall maintain and retain supporting documents adequate to ensure that claims for the Tax Limitation Amount are in accordance with applicable Comptroller and State of Texas requirements. Applicant and District shall maintain all such documents and other records relating to this Agreement and the State's property for a period of four (4) years after the later of:

- i. date of submission of the final payment;
- ii. Final Termination Date; or
- iii. date of resolution of all disputes or payment.

B. District and Applicant shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all information related to the Applicant's Qualified Property, Qualified Investment, Qualifying Jobs, and wages paid for Non-Qualifying Jobs such as work papers, reports, books, data, files, software, records, calculations, spreadsheets and other supporting documents pertaining to this Agreement, for purposes of inspecting, monitoring, auditing, or evaluating by Comptroller, State Auditor's Office, State of Texas or their authorized representatives. Applicant and District shall cooperate with auditors and other authorized Comptroller and State of Texas representatives and shall provide them with prompt access to all of such property as requested by Comptroller or the State of Texas. By example and not as an

exclusion to other breaches or failures, Applicant's failure to comply with this Section shall constitute a material breach of this Agreement.

C. Comptroller may require, at Applicant's or District's sole cost and expense, as applicable, independent audits by a qualified certified public accounting firm of Applicant's, District's or the Comptroller's books, records, or property. The independent auditor shall provide Comptroller with a copy of such audit at the same time it is provided to Applicant and/or District.

D. In addition to and without limitation on the other audit provisions of this Agreement, pursuant to Section 2262.003 of the Texas Government Code, the State Auditor may conduct an audit or investigation of Applicant or District or any other entity or person receiving funds from the State directly under this Agreement or indirectly through a subcontract under this Agreement. The acceptance of funds by Applicant or District or any other entity or person directly under this Agreement or indirectly through a subcontract under this Agreement acts as acceptance of the authority of the State Auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, Applicant or District or other entity that is the subject of an audit or investigation by the State Auditor must provide the State Auditor with access to any information the state auditor considers relevant to the investigation or audit. This Agreement may be amended unilaterally by Comptroller to comply with any rules and procedures of the state auditor in the implementation and enforcement of Section 2262.003 of the TEXAS GOVERNMENT CODE.

Section 8.7. FALSE STATEMENTS; BREACH OF REPRESENTATIONS. The Parties acknowledge that this Agreement has been negotiated, and is being executed, in reliance upon the information contained in the Application, and any supplements or amendments thereto, without which Comptroller would not have approved this Agreement and District would not executed this Agreement. By signature to this Agreement, Applicant:

A. represents and warrants that all information, facts, and representations contained in the Application are true and correct; and

B. acknowledges that if Applicant submitted its Application with a false statement, signs this Agreement with a false statement, or submits a report with a false statement, or it is subsequently determined that Applicant has violated any of the representations, warranties, guarantees, certifications or affirmations included in the Application or this Agreement, Applicant shall have materially breached this Agreement and the Agreement shall be invalid and void except for the enforcement of the provisions required by 34 Tex. Admin. Code § 9.1053(f)(2)(L).

ARTICLE IX

MATERIAL BREACH OR EARLY TERMINATION

Section 9.1. EVENTS CONSTITUTING MATERIAL BREACH OF AGREEMENT.

Applicant shall be in material breach of this Agreement if it commits one or more of the following acts or omissions:

A. the Application, any Application Supplement, or any Application Amendment on which this Agreement is approved is determined to be inaccurate as to an material representation, information, or fact or is not complete as to any material fact or representation or such application;

B. Applicant failed to have complete Qualified Investment as required by Section 2.5 of this Agreement;

C. Applicant failed to create the number of Qualifying Jobs specified in Schedule C of the Application;

D. Applicant failed to pay the average weekly wage of all jobs in the county in which District's administrative office is located for all Non-Qualifying Jobs created by Applicant;

E. Applicant failed to provide payments to District sufficient to protect the future District revenues through payment of revenue offsets and other mechanisms as more fully described in Article IV of this Agreement;

F. Applicant failed to provide payments to the District that protect District from the payment of extraordinary education related expenses related to the Project, as more fully specified in Article V of this Agreement;

G. Applicant failed to provide such supplemental payments as more fully specified in Article VI of this Agreement;

H. Applicant failed to create and Maintain Viable Presence on and/or with the Qualified Property as more fully specified in Article VIII of this Agreement;

I. Applicant failed to submit the reports required to be submitted by Section 8.2 to the satisfaction of Comptroller on the dates indicated on the form;

J. Applicant failed to provide the District or Comptroller with all information reasonably necessary for District or Comptroller determine whether Applicant is in compliance with its obligations, including, but not limited to, any employment obligations which may arise under this Agreement;

K. Applicant failed to allow authorized employees of District, Comptroller, the Appraisal District, and/or the State Auditor's Office to have access to Applicant's Qualified Property and/or business records in order to inspect the Project to determine compliance with the terms hereof or as necessary to properly appraise the Taxable Value of Applicant's Qualified Property;

L. Applicant failed to comply with a request by the State Auditor's office to review and audit the Applicant's compliance with the Agreement.

M. Applicant has made any payments to the District or to any other person or persons in any form for the payment or transfer of money or any other thing of value in recognition of, anticipation of, or consideration for this Agreement for limitation on appraised value made pursuant to Chapter 313 of the TEXAS TAX CODE, in excess of the amounts set forth in Articles III and IV, of this Agreement; or

N. Applicant fails either to:

i. Implement a plan to remedy non-compliance as required by Comptroller pursuant to 34 TAC Section 9.1059; or

ii. Pay a penalty assessed by Comptroller pursuant to 34 TAC Section 9.1059.

Section 9.2. CONSEQUENCES OF EARLY TERMINATION OR OTHER BREACH BY APPLICANT.

A. In the event that Applicant terminates this Agreement without the consent of District, except as provided in Section 7.2 of this Agreement, or in the event that Applicant fails to comply in any material respect with the terms of this Agreement or to meet any material obligation under this Agreement, after the notice and cure period provided by Section 9.3, then District shall be entitled to the recapture of all ad valorem tax revenue lost as a result of this Agreement together with the payment of penalty and interest, as calculated in accordance with Section 9.3.C on that recaptured ad valorem tax revenue. For purposes of this recapture calculation, Applicant shall be entitled to a credit for all payments made to District pursuant to Article IV, V, and VI of this Agreement.

B. Notwithstanding Section 9.2.A, in the event that District determines that Applicant has failed to Maintain Viable Presence and provides written notice of termination of the Agreement, then Applicant shall pay to District liquidated damages for such failure within thirty (30) days after receipt of such termination notice. The sum of liquidated damages due and payable shall be the sum total of District ad valorem taxes for all of the Tax Years for which a Tax Limitation was granted pursuant to this Agreement prior to the year in which the default occurs that otherwise would have been due and payable by Applicant to District without the benefit of this Agreement, including penalty and interest, as calculated in accordance with Section 7.5. For purposes of this liquidated damages calculation, Applicant shall be entitled to a credit for all payments made to District pursuant to Article IV, V, and VI. Upon payment of such liquidated damages, Applicant's obligations under this Agreement shall be deemed fully satisfied, and such payment shall constitute the District's sole remedy.

C. In determining the amount of penalty or interest, or both, due in the event of a breach of this Agreement, District shall first determine the base amount of recaptured taxes less all credits under Section 9.2.A owed for each Tax Year during the Tax Limitation Period. District shall calculate penalty or interest for each Tax Year during the Tax Limitation Period in accordance with the methodology set forth in Chapter 33 of the Texas Tax Code, as if the base amount calculated for such Tax Year less all credits under Section 9.2.A had become due and payable on February 1 of the calendar year following such Tax Year. Penalties on said amounts shall be calculated in accordance with the methodology set forth in Section 33.01(a) of the Texas Tax Code, or its successor statute. Interest on said amounts shall be calculated in accordance with the methodology set forth in Section 33.01(c) of the Texas Tax Code, or its successor statute.

Section 9.3. LIMITED STATUTORY CURE OF MATERIAL BREACH. In accordance with the provisions of Section 313.0275 of the Texas Tax Code, for any full tax year which commences after the Project has become operational, Applicant may cure the Material Breaches of this Agreement, defined in Sections 9.1.C. or 9.1.D, above, without the termination of the remaining term of this Agreement. In order to cure its non-compliance with Sections 9.1.C. or 9.1.D for the particular Tax Year of non-compliance only, Applicant may make the liquidated damages payment required by Section 313.0275(b) of the Texas Tax Code, in accordance with the provisions of Section 313.0275(c) of the Texas Tax Code.

Section 9.3. DETERMINATION OF MATERIAL BREACH AND TERMINATION OF AGREEMENT.

A. Prior to making a determination that the Applicant has committed a Material Breach of this Agreement, such as making a misrepresentation in the Application, failing to Maintain Viable Presence in District as required by Section 8.1 of this Agreement, failing to make any payment required under this Agreement when due, or has otherwise committed a material breach of this Agreement, District shall provide Applicant with a written notice of the facts which it believes have caused the Material Breach of this Agreement, and if cure is possible, the cure proposed by District. After receipt of the notice, Applicant shall be given ninety (90) days to present any facts or arguments to the Board of Trustees showing that it is not in Material Breach of its obligations under the Agreement, or that it has cured or undertaken to cure any such Material Breach.

B. If the Board of Trustees is not satisfied with such response and/or that such breach has been cured, then the Board of Trustees shall, after reasonable notice to Applicant, conduct a hearing called and held for the purpose of determining whether such breach has occurred and, if so, whether such breach has been cured. At any such hearing, Applicant shall have the opportunity, together with their counsel, to be heard before the Board of Trustees. At the hearing, the Board of Trustees shall make findings as to whether or not a Material Breach of this Agreement has occurred, the date such breach occurred, if any, and whether or not any such breach has been cured. In the event that the Board of Trustees determines that such a breach has occurred and has not been cured, it shall also terminate the Agreement and determine the amount of recaptured taxes under Section 9.2.A and B (net of all credits under Section 9.2.A and B), and the amount of any penalty and/or interest under Section 9.2.C that are owed to District.

C. After making its determination regarding any alleged Breach, the Board of Trustees shall cause Applicant to be notified in writing of its determination (a "*Determination of Breach and Notice of Contract Termination.*").

Section 9.4. DISPUTE RESOLUTION.

A. After receipt of notice of the Board of Trustee's Determination of Breach and Notice of Contract Termination under Section 9.3, Applicant shall have ninety (90) days in which either to tender payment or evidence of its efforts to cure, or to initiate mediation of the dispute by written notice to District, in which case the District and the Applicant shall be required to make a good faith effort to resolve, without resort to litigation and Within ninety (90) days after the Applicant's receipt of notice of the Board of Trustee's determination of breach under Section 9.3, such dispute through mediation with a mutually agreeable mediator and at a mutually convenient time and place for the mediation. If the Parties are unable to agree on a mediator, a mediator shall be selected by the senior state district court judge then residing in [*Insert County Name*]County, Texas. The Parties agree to sign a document that provides the mediator and the mediation will be governed by the provisions of Chapter 154 of the Texas Civil Practice and Remedies Code and such other rules as the mediator shall prescribe. With respect to such mediation, (i) District shall bear one-half of such mediator's fees and expenses and Applicant shall bear one-half of such mediator's fees and expenses, and (ii) otherwise each Party shall bear all of its costs and expenses (including attorneys' fees) incurred in connection with such mediation.

B. In the event that any mediation is not successful in resolving the dispute or that payment is not received before the expiration of such ninety (90) days, District shall have the remedies for

the collection of the amounts determined under Section 7.8 as are set forth in Chapter 33, Subchapters B and C, of the Texas Tax Code for the collection of delinquent taxes. In the event that District successfully prosecutes legal proceedings under this section, the Applicant shall also be responsible for the payment of attorney's fees and a tax lien on Applicant's Qualified Property and Applicant's Qualified Investment pursuant to Section 33.07 of the Texas Tax Code to the attorneys representing District pursuant to Section 6.30 of the Texas Tax Code.

C. In any event where a dispute between District and Applicant under this Agreement cannot be resolved by the Parties, after completing the procedures required above in this Section, either District or Applicant may seek a judicial declaration of their respective rights and duties under this Agreement or otherwise, in any judicial proceeding, assert any rights or defenses, or seek any remedy in law or in equity, against the other Party with respect to any claim relating to any breach, default, or nonperformance of any covenant, agreement or undertaking made by a Party pursuant to this Agreement.

Section 9.5. LIMITATION OF OTHER DAMAGES.

Notwithstanding anything contained in this Agreement to the contrary, in the event of default or breach of this Agreement by the Applicant, District's damages for such a default shall under no circumstances exceed the greater of either any amounts calculated under Sections 9.2 above, or the monetary sum of the difference between the payments and credits due and owing to Applicant at the time of such default and District taxes that would have been lawfully payable to District had this Agreement not been executed. In addition, District's sole right of equitable relief under this Agreement shall be its right to terminate this Agreement. The Parties further agree that the limitation of damages and remedies set forth in this Section 9.5 shall be the sole and exclusive remedies available to the District, whether at law or under principles of equity.

Section 9.6. BINDING ON SUCCESSORS.

In the event of a merger or consolidation of District with another school district or other governmental authority, this Agreement shall be binding on the successor school district or other governmental authority.

ARTICLE X. MISCELLANEOUS PROVISIONS

Section 10.1. INFORMATION AND NOTICES.

A. Unless otherwise expressly provided in this Agreement, all notices required or permitted hereunder shall be in writing and deemed sufficiently given for all purposes hereof if (i) delivered in person, by courier (e.g., by Federal Express) or by registered or certified United States Mail to the Party to be notified, with receipt obtained, or (ii) sent by facsimile transmission, with "answer back" or other "advice of receipt" obtained, in each case to the appropriate address or number as set forth below. Each notice shall be deemed effective on receipt by the addressee as aforesaid; provided that, notice received by facsimile transmission after 5:00 p.m. at the location of the

addressee of such notice shall be deemed received on the first business day following the date of such electronic receipt.

B. Notices to District shall be addressed to District's Authorized Representative as follows:

Dr. James Gilcrease, Superintendent
Hillsboro Independent School District
121 East Franklin Street
Hillsboro, TX 76645

C. Notices to Applicant shall be addressed to its Authorized Representative as follows:

Ron Healey
Treasurer
IKO Southwest Inc.
6 Denny Road, Suite 200
Wilmington, DE 19809

or at such other address or to such other facsimile transmission number and to the attention of such other person as Applicant may designate by written notice to District.

Section 10.2. AMENDMENTS TO AGREEMENT; WAIVERS.

A. This Agreement may not be modified or amended except by an instrument or instruments in writing signed by all of the Parties and after completing the requirements of subsection B hereof. Waiver of any term, condition or provision of this Agreement by any Party shall only be effective if in writing and shall not be construed as a waiver of any subsequent breach of, or failure to comply with, the same term, condition or provision, or a waiver of any other term, condition or provision of this Agreement.

B. By official action of the District's Board of Trustees, this Agreement may only be amended according to the following:

i. Applicant shall submit to District and Comptroller:

A. a written request to amend the Application and this Agreement which shall specify the changes Applicant requests;

B. any changes to the information that was provided in the Application that was approved by District and considered by Comptroller;

C. and any additional information requested by District or Comptroller necessary to evaluate the amendment or modification; and

ii. Comptroller shall review the request and any additional information and provide a revised Comptroller certificate for a limitation within 90 days of receiving the revised Application and, if the request to amend the Application has not been approved by Comptroller by the end of the 90 day period, the request is denied;

iii. If Comptroller has not denied the request, District's Board of Trustees shall approve or disapprove the request before the expiration of 150 days after the request is filed.

C. Any amendment of the Agreement adding additional or replacement Qualified Property pursuant to this Section 10.3 of this Agreement shall:

i. require that all property added by amendment be eligible property as defined by Section 313.024 of the Texas Tax Code;

ii. clearly identify the property, investment, and employment information added by amendment from the property, investment, and employment information in the original Agreement; and

iii. define minimum eligibility requirements for the recipient of limited value.

D. This Agreement may not be amended to extend the value limitation time period beyond its ten year statutory term.

Section 10.4. ASSIGNMENT.

Any assignment of the interests of Applicant in this Agreement is considered an amendment to the Agreement and Applicant may only assign this Agreement, or a portion of this Agreement, after complying with the provisions of Section 10.3 regarding amendments to the Agreement.

Section 10.5. MERGER.

This Agreement contains all of the terms and conditions of the understanding of the Parties relating to the subject matter hereof. All prior negotiations, discussions, correspondence, and preliminary understandings between the Parties and others relating hereto are superseded by this Agreement.

Section 10.6. MAINTENANCE OF COUNTY APPRAISAL DISTRICT RECORDS.

When appraising the Applicant's Qualified Property and the Applicant's Qualified Investment subject to a limitation on Appraised Value under this Agreement, the Chief Appraiser of the Appraisal District shall determine the Market Value thereof and include both such Market Value and the appropriate value thereof under this Agreement in its appraisal records.

Section 10.7. GOVERNING LAW.

This Agreement and the transactions contemplated hereby shall be governed by and interpreted in accordance with the laws of the State of Texas without giving effect to principles thereof relating to conflicts of law or rules that would direct the application of the laws of another jurisdiction. Venue in any legal proceeding shall be in the County.

Section 10.8. AUTHORITY TO EXECUTE AGREEMENT.

Each of the Parties represents and warrants that its undersigned representative has been expressly authorized to execute this Agreement for and on behalf of such Party.

Section 10.9. SEVERABILITY.

If any term, provision or condition of this Agreement, or any application thereof, is held invalid, illegal or unenforceable in any respect under any Law (as hereinafter defined), this Agreement shall be reformed to the extent necessary to conform, in each case consistent with the intention of the Parties, to such Law, and to the extent such term, provision or condition cannot be so reformed, then such term, provision or condition (or such invalid, illegal or unenforceable application thereof) shall be deemed deleted from (or prohibited under) this Agreement, as the case may be, and the validity, legality and enforceability of the remaining terms, provisions and conditions contained herein (and any other application such term, provision or condition) shall not in any way be affected or impaired thereby. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties hereto shall negotiate in good faith to modify this Agreement in an acceptable manner so as to effect the original intent of the Parties as closely as possible to the end that the transactions contemplated hereby are fulfilled to the extent possible. As used in this Section 10.9, the term "Law" shall mean any applicable statute, law (including common law), ordinance, regulation, rule, ruling, order, writ, injunction, decree or other official act of or by any federal, state or local government, governmental department, commission, board, bureau, agency, regulatory authority, instrumentality, or judicial or administrative body having jurisdiction over the matter or matters in question.

Section 10.10. PAYMENT OF EXPENSES.

Except as otherwise expressly provided in this Agreement, or as covered by the application fee, each of the Parties shall pay its own costs and expenses relating to this Agreement, including, but not limited to, its costs and expenses of the negotiations leading up to this Agreement, and of its performance and compliance with this Agreement.

Section 10.11. INTERPRETATION.

When a reference is made in this Agreement to a Section, Article or Exhibit, such reference shall be to a Section or Article of, or Exhibit to, this Agreement unless otherwise indicated. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. The words "include," "includes" and "including" when used in this Agreement shall be deemed in such case to be followed by the phrase " , but not limited to, ". Words used in this Agreement, regardless of the number or gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context shall require. This Agreement is the joint product of the Parties and each provision of this Agreement has been subject to the mutual consultation, negotiation and agreement of each Party and shall not be construed for or against any Party.

Section 10.12. EXECUTION OF COUNTERPARTS. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which, taken together, shall constitute but one and the same instrument, which may be sufficiently evidenced by one counterpart.

Section 10.13. PUBLICATION OF DOCUMENTS. The Parties acknowledge that District is required to publish Application and its required schedules, or any amendment thereto; all economic analyses of the proposed Project submitted to District; and the approved and executed copy of this Agreement or any amendment thereto, as follows:

A. Within seven (7) days of such document, the school district shall submit a copy to Comptroller for Publication on Comptroller's Internet website;

B. District shall provide on its website a link to the location of those documents posted on Comptroller's website;

C. This Section does not require the publication of information that is confidential under Section 313.028 of the Texas Tax Code.

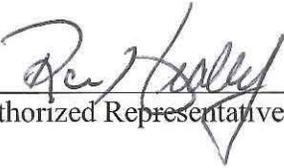
Section 10.14. CONTROL; OWNERSHIP; LEGAL PROCEEDINGS. Applicant shall immediately notify District in writing of any actual or anticipated change in the control or ownership of Applicant and of any legal or administrative investigations or proceedings initiated against Applicant regardless of the jurisdiction from which such proceedings originate.

Section 10.15. DUTY TO DISCLOSE.

If circumstances change or additional information is obtained regarding any of the representations and warranties made by Applicant in the Application or this Agreement, or any other disclosure requirements, subsequent to the date of this Agreement, Applicant's duty to disclose continues throughout the term of this Contract.

IN WITNESS WHEREOF, this Agreement has been executed by the Parties in multiple originals on this 10th day of November, 2014.

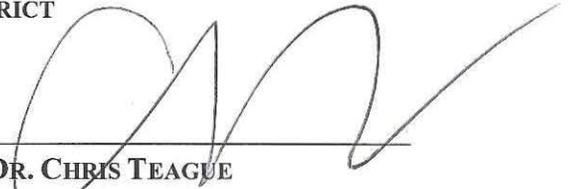
IKO Southwest Inc.

By: 
Authorized Representative

Name: RON HEALEY

Title: TREASURER

**HILLSBORO INDEPENDENT SCHOOL
DISTRICT**

By: 

DR. CHRIS TEAGUE
President
Board of Trustees

Attest:

By: 

KAREN SMITH
Secretary
Board of Trustees

EXHIBIT 1

DESCRIPTION AND LOCATION OF ENTERPRISE OR REINVESTMENT ZONE

Hillsboro Reinvestment Zone Number 17 was created on June 23, 2014, by action of the City Council of the City of Hillsboro. As a result, all of the following real property within Hill County, Texas is located within the boundaries of the *Hillsboro Reinvestment Zone Number 17*. The surveyed map of the *Hillsboro Reinvestment Zone Number 17* is attached as the last pages of this **EXHIBIT 1**.

Exhibit "A" B-1

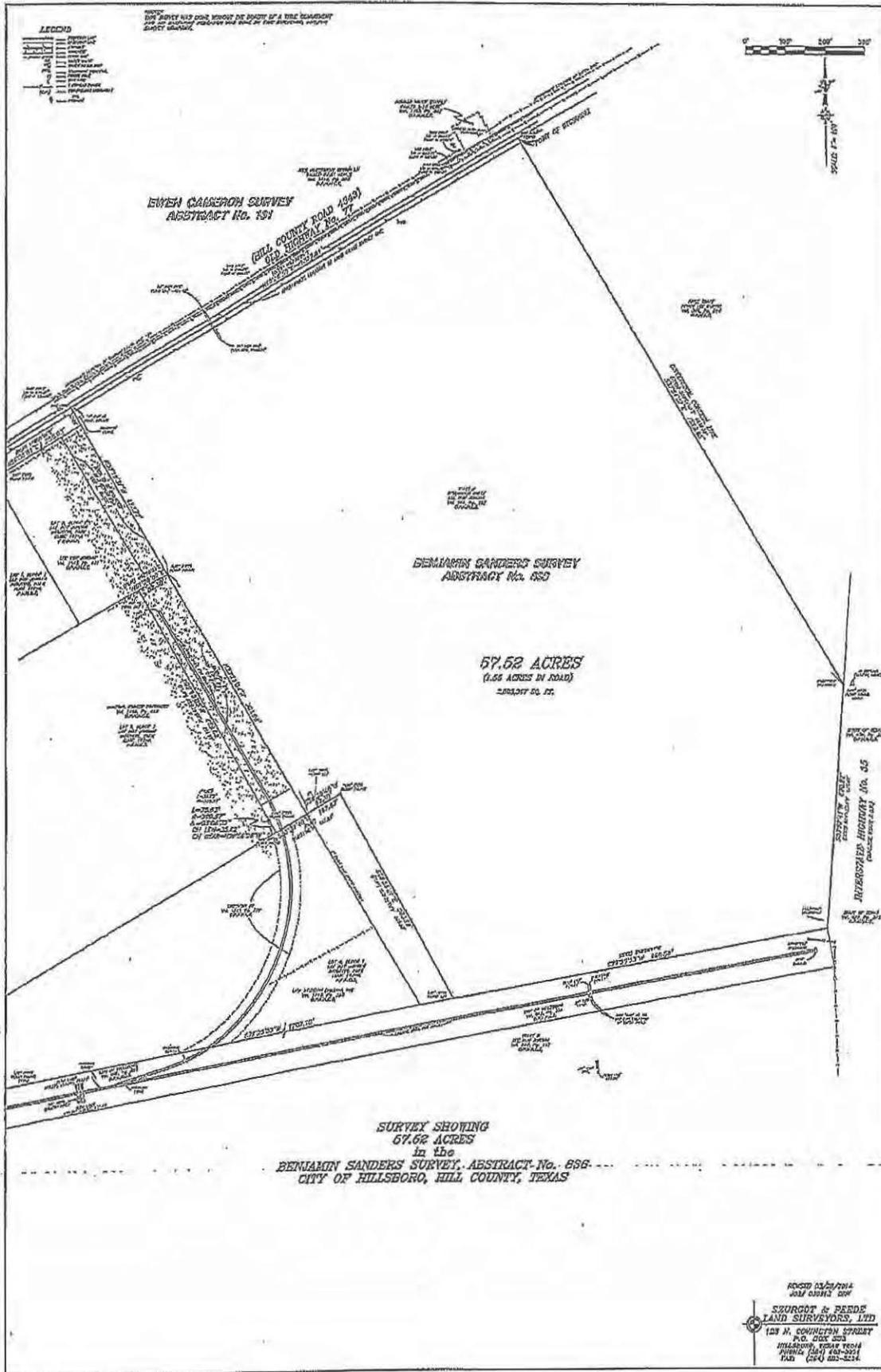
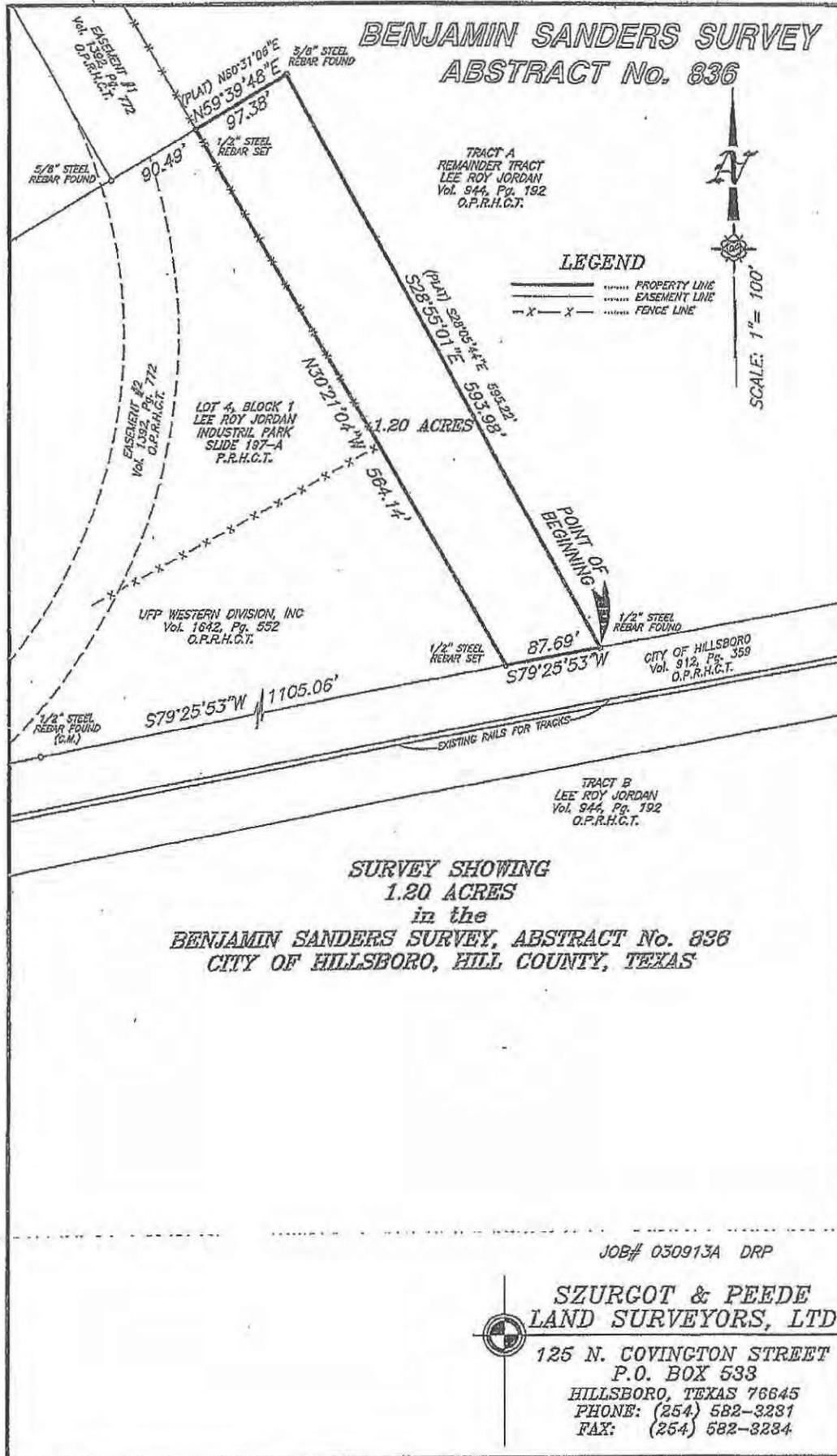


Exhibit "A" B-2



JOB# 030913A DRP

SZURGOT & PEEDE
LAND SURVEYORS, LTD
 125 N. COVINGTON STREET
 P.O. BOX 533
 HILLSBORO, TEXAS 76645
 PHONE: (254) 582-3231
 FAX: (254) 582-3284

EXHIBIT 2

DESCRIPTION AND LOCATION OF THE APPLICANT'S QUALIFIED INVESTMENT

All Qualified Property owned or leased by the Applicant and located within the boundaries of both the Hillsboro Independent School District and the *Hillsboro Reinvestment Zone Number 17* will be included in and subject to this Agreement. Specifically, all Qualified Property of the Applicant located within the land identified in **EXHIBIT 1**.

The legal description for the 56.15 acres of Land being acquired by Applicant (all of which is within the *Hillsboro Reinvestment Zone Number 17*) is as follows:

Tract 1:

LEGAL DESCRIPTION

53.51 Acres

In the

Benjamin Sanders Survey, Abstract No. 836

City of Hillsboro, Hill County, Texas

All that certain tract or parcel of land located in the Benjamin Sanders Survey, Abstract No. 836, City of Hillsboro, Hill County, Texas, and being a part of a called 94.72 acre tract of land (Tract A) conveyed by Welca Jean Farr and William Ray Allen to Lee Roy Jordan, D/B/A as Lee Roy Jordan Interests, dated August 27, 1997, and being recorded in Volume 944, Page 192, of the Official Public Records of Hill County, Texas, and being more particularly described as follows:

BEGINNING at a mag-nail found in Old Highway No. 77 (Hill County Road 4343), called to be in the northerly line of said Benjamin Sanders Survey and the southerly line of the Ewen Cameron Survey, Abstract No. 131 and being the northwest corner of a tract of land conveyed to Percy Lee Curtis (First Tract) by deed recorded in Volume 346, Page 214, of the Deed Records of Hill County, Texas, and being the northeast corner of said 94.72 acre tract;

THENCE South 30 degrees 54 minutes 07 seconds East (Directional Control Line), along the common line between said Curtis tract and said 94.72 acre tract, for a distance of 1599.85 feet to a 5/8" steel rebar found at a corner on the westerly line of Interstate Highway No. 35 (variable width right-of-way), being the most easterly northeast corner of said 94.72 acre tract;

THENCE South 03 degrees 57 minutes 41 seconds West, along the westerly line of said Interstate Highway No. 35, for a distance of 620.22 feet to a brass TXT-DOT monument found at a corner on the northerly line of the old SF&L Railway (100 foot right-of-way) that is conveyed to the City of Hillsboro by Quitclaim Deed recorded in Volume 912, Page 359, of the Official Public Records of Hill County, Texas, and being the southeast corner of said 94.72 acre tract;

THENCE South 79 degrees 25 minutes 53 seconds West, along the common line between said Railway tract and said 94.72 acre tract, for a distance of 968.58 feet to a 1/2" steel rebar set at a corner, being the southeast corner of Lot 4, Block 1, of Lee Roy Jordan Industrial Park, an addition to the City of Hillsboro according to the plat recorded in Slide 197-A, of the Plat Records of Hill County, Texas, and being in the southerly line of said 94.72 acre tract and from which a 1/2" steel rebar found at the southwest corner of said 94.72 acre tract bears South 79 degrees 25 minutes 53 seconds West at a distance of 1202.75 feet;

THENCE North 28 degrees 55 minutes 01 seconds West, along the easterly line of said Lot 4, for a distance of 593.98 feet to a 5/8" steel rebar found at a corner, being the northeast corner of said Lot 4;

THENCE South 59 degrees 39 minutes 48 seconds West, along the northerly line of said Lot 4, for a distance of 97.38 feet to a 5/8" steel rebar found at a corner, being the southeast corner of a tract of land

described as Easement #1 recorded in Volume 1392, Page 772, of the Official Public Records of Hill County, Texas, from which a 5/8" steel rebar found at the southeast corner of Lot 3, of said Block 1 bears South 59 degrees 39 minutes 48 seconds West at a distance of 187.87 feet;

THENCE North 30 degrees 21 minutes 04 seconds West, generally along a fence line and the easterly line of said of said Easement #1 tract, for distance of 389.67 feet to a 1/2" steel rebar set at a corner on the east line of said Easement #1 tract;

THENCE North 59 degrees 36 minutes 59 seconds East, for a distance of 217.77 feet to a 1/2" steel rebar set at a corner;

THENCE North 30 degrees 18 minutes 31 seconds West, at 750.00 feet passing a 1/2" steel rebar set for reference on the south line of said Old Highway No. 77, continuing in all for a total distance of 487.70 feet to a point in said Old Highway No. 77 and the northerly line of the aforementioned 94.72 acre tract;

THENCE North 59 degrees 36 minutes 59 seconds East, along said Old Highway No. 77 and the northerly line of said 94.72 acre tract, for a distance of 11109.81 feet to the point of beginning, and containing 53.51 acres of land, of which approximately 1.27 acres of land lies within said Old Highway No. 77, as surveyed by Szurgot & Peede Land Surveyors, LTD., in March and April of 2013 and revised on July 29, 2014.

Bears for this survey are based on Texas State Plain North Central Zone Coordinates.

Donny Peede, Texas RPLS No. 5137
Job No. 030913 DRP
Revised July 29, 2014

Tract 2:

"Lot 4R2, Block 1, Lee Roy Jordan Industrial Addition, an addition to the City of Hillsboro, Hill County, Texas, according to the re-plat recorded in Slide 319-A of the Plat Records of Hill County, Texas."

EXHIBIT 3
DESCRIPTION AND LOCATION OF QUALIFIED PROPERTY

This Agreement covers all qualified property within Hillsboro ISD necessary for the commercial operations of the proposed manufacturing facility described in Tab 4. Qualified property includes, but is not limited to real estate, site preparation, roads and paving, office, warehouse, and manufacturing buildings, silos, storage facilities, rail spur and rail car loading and unloading facilities, truck loading and unloading facilities, docks, scales, pumps piping, tanks heaters, blenders and related production equipment, conveyors and elevators, control rooms, and shops and all related and necessary facilities and equipment for the manufacturing of roofing materials; including but not limited to one or more of the following:

- Asphalt storage tanks
- Asphalt unloading system from trains
- Asphalt flux storage tanks
- Asphalt coating storage tanks
- Oxidizer tanks
- Knock-out tanks
- Incinerators
- Oxidizer air blowers
- F.C. tanks
- Hot oil heaters
- Steam heat exchangers
- Hot oil expansion tanks
- Primary transformers
- Emergency generators
- Limestone Pulveriser systems
- Filler storage silos
- Granule unloading systems from trains
- Granule unloading elevators
- Granule storage silos
- Dust collectors
- Filler heaters
- Main production equipment:
 - Coating preheaters
 - Blend elevators
 - HL elevators
 - Fiesta elevators
 - BS elevators

- Blend reclaim elevators
- Filler mixers
- Top Surge tanks
- Bottom surge tanks
- Unwind stands
- DMA accumulators
- Coaters
- Slating sections
- Press sections
- Cooling sections
- Finish product loopers
- Carry over sections
- 3-tab sections
- Laminator sections
- Slitter sections
- Cut to length sections
- Take off sections
- Catchers sections
- Hi lug sections
- Packaging ends
- Arpacs
- SBS mixing tanks
- SBS storage tanks
- Machine shop equipment
- Parts storage systems
- Pallet dispensing systems
- Water storage and purifier systems
- Compressed air systems
- Site mobile equipment including forklifts, front end loaders, rail car shunters, site maintenance truck(s)
- Mist Eliminators
 - For Shingle Line
 - For Laminator/Adhesive Mixing and Storage
 - For Asphalt Storage Tanks

The facility will also require ancillary personal property. All of the property for which the Applicant is seeking a limitation on appraised value will be owned by the Applicant or a valid assignee pursuant to this Agreement.