

STATE OF TEXAS

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COUNTY OF BEXAR

CITY OF SAN ANTONIO

TAX ABATEMENT AGREEMENT

FOR REAL AND PERSONAL PROPERTY

## 1. PARTIES

THIS AGREEMENT (the "Agreement") is entered into on this \_\_\_\_ day of \_\_\_\_\_, 2021 (the "Effective Date") by and between: (i) **Matthews International Corporation**, a     *Pennsylvania*         *Corporation*     (hereinafter referred to as "Matthews"), who holds a leasehold interest in the real property described herein and owns personal property located on the Property as defined herein, (ii) Agarita Profit Street LLC, a     *Texas*         *Limited Liability Company*     (hereinafter referred to as "Landlord"), who owns the fee simple interest in the real property that is the subject of this Agreement, and (iii) the **City of San Antonio**, a municipal corporation, (hereinafter referred to as the "City"), acting by and through its City Manager under the authority of its City Council.

## 2. AUTHORIZATION AND FINDINGS

A. This Agreement is entered into pursuant to the following authorities:

1. The Texas Property Redevelopment and Tax Abatement Act of 1987, V.A.T.S. Tax Code, Chapter 312, as amended;
2. CITY COUNCIL RESOLUTION No. 89-07-12, dated the 15th day of February 1989, and most recently revised by Ordinance No. 2020-12-17-\_\_\_\_\_ on December 17, 2020, together which established the City of San Antonio Guidelines and Criteria for Tax Phase-In and Reinvestment Zones, (hereinafter referred to as the "Guidelines and Criteria");
3. This Property is located within an existing Texas Enterprise Zone area, and in accordance with Section 321.2011 of the Texas Tax Code, designation of an area as a Texas Enterprise Zone constitutes designation of the area as a Reinvestment Zone (the "Reinvestment Zone") for tax abatement purposes without further hearing or procedural requirement; and
4. CITY COUNCIL ORDINANCE NO. \_\_\_\_\_, dated \_\_\_\_\_, 2021, which specifically approved this Agreement and authorized execution hereof.

B. The City Council, by its approval of this Agreement, hereby finds that the terms of this Agreement abide by the Guidelines and Criteria and approving this Agreement will not have any substantial long-term adverse effect on the provision of city services or the City's tax base and the planned use of the Property (defined below) inside the qualifying Reinvestment Zone by Matthews for the uses contemplated herein will not constitute a hazard to public safety, health or morals.

### 3. PROPERTY

A. Landlord has a fee-simple interest in the real property located at 4338 Profit Drive, San Antonio, Texas 78219 ("Property"), legally described in Exhibit A, attached hereto and incorporated herein, and Landlord has entered into a lease agreement with Matthews ("Lease") for the occupation of the leased premises in the Property for the term set forth in the Lease, which is a period of not less than the Term of this Agreement as described below. The Property is located within a qualifying Reinvestment Zone for the purposes of the Texas Property Redevelopment and Tax Abatement Act of 1987, V.A.T.S. Tax Code, Chapter 312.

B. Matthews has or intends to hold a leasehold interest in the leased premises on the Property and will control the leased premises on the Property for the Term of this Agreement and intends to establish a manufacturing facility on the Property. At the Property, Matthews will manufacture proprietary equipment for battery manufacturing operations and provide service and support to Matthews Engineering customers ("Business Activities"). Matthews shall commence performing Business Activities at the Property by September 1, 2021, and shall conduct its Business Activities, or the normal business activities of a Related Organization as defined in Article 5(J), at the Property for the Term of this Agreement. The Property, Real Property Improvements, the Personal Property Improvements and Matthews' conducting the Business Activities cumulatively are the "Project."

C. Matthews will invest or cause to be invested a cumulative total of at least NINE MILLION DOLLARS (\$9,000,000.00) by December 31, 2024. Of the NINE MILLION DOLLARS (\$9,000,000.00), ONE MILLION SEVEN HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$1,750,000.00) will be expended on real property improvements ("Real Property Improvements") and SEVEN MILLION TWO HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$7,250,000.00) will be expended on personal property improvements ("Personal Property Improvements") to be located on the Property. The Personal Property Improvements shall not be placed on the Property sooner than the Effective Date of this Agreement.

D. Matthews shall establish a separate tax account with the Bexar Appraisal District for the Personal Property Improvements under Matthews' name as contained herein and Landlord shall establish a separate tax account with the Bexar Appraisal District for the Real Property Improvements under Landlord's name as contained herein, and Matthews shall provide these tax account numbers to the City. The information from such accounts shall be used to determine the value of Matthews's and Landlord's investment in the Property. Matthews is responsible for filing all necessary documents required by the Bexar Appraisal District or state statute to receive the abatement authorized under this Agreement.

**4. MATTHEWS' AND LANDLORD'S REPRESENTATIONS**

A. Matthews and Landlord represent that neither has knowledge that any interest in the Property is presently owned, held or leased by a member of the San Antonio City Council, Zoning Commission, Planning Commission, the City's Economic Development Department, or any other City officer or employee. Matthews and Landlord further represent that neither shall knowingly sell, lease or otherwise convey an interest in the Property to a member of the San Antonio City Council, the Zoning Commission, the Planning Commission, the City's Economic Development Department or any other City officer or employee, as long as this Agreement remains in effect.

B. Matthews represents that there is no litigation pending against Matthews for any violations under the Occupational Safety and Health Act ("OSHA") in Bexar County.

**5. MATTHEWS' OBLIGATIONS**

In order for Matthews to take advantage of the tax abatement offered by City Matthews will be required to fulfill all of the obligations set forth within this Article 5.

A. In addition to all other obligations and/or duties imposed on Matthews by any other incentive agreements it has entered into with the State of Texas, Bexar County and/or the City of San Antonio, Matthews shall:

1. Lease the Real Property Improvements and own, hold an interest in, or otherwise control the Personal Property Improvements that are the subject of this Agreement; and
2. Invest, or cause to be invested, at least ONE MILLION SEVEN HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$1,750,000.00) in Real Property Improvements on or prior to December 31, 2024; and
3. Invest, or cause to be invested, at least SEVEN MILLION TWO HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$7,250,000.00) in Personal Property Improvements on or prior to December 31, 2024; and
4. Occupy and continuously use the leased premises at the Property for the Business Activities for the Term of the Agreement; and
5. Create not less than one FIFTY (50) Full-time Jobs (as defined in Article 5(C)) at the Property as follows:
  - (i) Prior to December 31, 2021, Matthews shall create TWENTY (20) Full Time Jobs at the Property;
  - (ii) Prior To Prior to December 31, 2022, Matthews shall create an additional FIVE (5) Full Time Jobs at the Property in addition to

maintaining the previous 20 Full-Time Jobs for a cumulative total of 25 Full-Time Jobs;

- (iii) Prior To Prior to December 31, 2024, Matthews shall create an additional TWENTY (20) Full Time Jobs at the Property in addition to maintaining the previous 25 Full-Time Jobs for a cumulative total of 45 Full-Time Jobs;
- (iv) Prior To Prior to December 31, 2025, Matthews shall create an additional FIVE (5) Full Time Jobs at the Property in addition to maintaining the previous 45 Full-Time Jobs for a cumulative total of 50 Full-Time Jobs.

Upon hiring and meeting each annual Full-Time Job creation requirement, Matthews shall maintain such jobs until the expiration of the Term of this Agreement.

6. Comply with all other applicable terms of this Agreement and all other State and local agreements applicable to the Project.

B. Matthew covenants and agrees that it shall pay one hundred percent (100%) of its new and existing employees (without respect to the number of jobs Matthews is required to maintain and hire hereunder) at least the City’s effective prevailing “living” wage as determined by the City Council in its Tax Abatement Guidelines, which is TWELVE DOLLARS AND SIXTY CENTS (\$12.60) per hour, and shall pay at least seventy percent (70%) of all new and existing employees the prevailing “all-industry” wage of at least SEVENTEEN DOLLARS AND THIRTY-SEVEN CENTS (\$17.37) per hour. Additionally, the fifty (50) Full-Time Jobs required to be created and maintained pursuant to Article 5(A) above i) shall earn a minimum annual salary of FIFTY THOUSAND AND 00/100 DOLLARS (\$50,000.00) excluding benefits, bonuses, shift differential work and overtime, and ii) the average annual salary, excluding benefits, bonuses, shift differential work and overtime, for the 50 jobs shall be at least SEVENTY-THREE THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (\$73,500.00) .

C. For the purposes of this Agreement, a “Full-Time Job” shall constitute the performance by one individual the amount of two thousand eighty (2,080) straight-time paid hours in a fiscal year, excluding shift differential work and overtime.

D. Matthews covenants and agrees that it shall offer all of its non-temporary, full-time employees employed on the Property and their eligible dependents the opportunity to participate in a healthcare benefits package that is substantially similar to the healthcare benefits package offered to similarly situated employees of the Bexar County market. The parties acknowledge and agree that the intended benefits package may change from time to time in accordance with the applicable benefits market and any applicable changes in law.

E. Matthews covenants and agrees that it shall spend at least FIVE PERCENT (5%) of the estimated value of the taxes to be abated pursuant to this Agreement, which is equal to ELEVEN THOUSAND SEVEN HUNDRED FIFTY (\$11,750.00) (5% of the estimated abatement amount of \$234,693.00) during the first FIVE (5) year period of the Abatement Term on City supported internship initiatives, including, but not limited to, the City's Ambassador Summer Internship Program, SA Works, or Upgrade. All interns hired pursuant to this provision of the Agreement shall be paid at least the City's prevailing "living" wage.

F. Matthews shall collaborate with City and engage in preferential interviewing and hiring from the City's workforce development program. For those positions to be created pursuant to this Agreement for which Matthews engages in recruitment, Matthews shall coordinate with City to market those positions to City's workforce program participants. Matthews shall interview any such workforce program participant that applies for a position and meets the minimum qualifications.

G. Matthews covenants and agrees that it shall comply with all applicable federal and state laws governing the employment relationship between employers and employees.

H. Matthews covenants and agrees that it shall conduct its Business Activities (as defined in Article 3(B)) in the leased premises at the Property in accordance with all applicable federal, state and local laws.

I. Any construction Matthews performs or causes to be performed at the leased premises on the Property shall be in accordance with the Lease and all applicable federal, state and local laws including, but not limited to, Texas Commission on Environmental Quality regulations, Bexar County and City of San Antonio laws, Building Codes and ordinances, Historic Preservation and Urban Design ordinances, flood, subdivision, building, electrical, plumbing, fire and life safety codes and regulations, current and as amended.

J. Except as provided herein, Matthews covenants and agrees that it shall use the leased premises on the Property only to conduct its Business Activities. Without additional consent or approval by the City Council, a parent, subsidiary or affiliate organization of Matthews or new entity created as a result of a merger, acquisition, or other corporate restructure or reorganization of Matthews, or any component thereof (hereinafter "Related Organization") may occupy and use the leased premises on the Property for such Related Organization's normal business activities, so long as such business activities are those of an advanced manufacturing operation or comparable to the Business Activities of Matthews in the leased premises at the Property. To be eligible for the tax abatements as provided in this Agreement, such Related Organization must agree in writing to fully comply with all applicable terms of this Agreement. Except as authorized above, Matthews covenants and agrees not to change the principal use of the leased premises at the Property without prior approval by the City Council, as evidenced in a duly approved ordinance.

K. Subject to the Lease, Matthews and Landlord covenant and agree that they shall maintain the leased premises at the Property and any constructed improvements in good repair and condition during the Term of this Agreement, normal wear and tear and damage by fire or other casualty not caused as a result of the negligence, intentional act or misconduct of Matthews excepted.

L. Subject to the Lease, Matthews covenants and agrees that, upon five business days prior notice received by it from the City, Matthews shall allow designated representatives of the City access to the leased premises at the Property during normal business hours for inspection to determine if the terms and conditions of this Agreement are being met. This inspection is independent of City's police powers to inspect for purposes of assuring compliance with applicable City Codes and Ordinances. The City's access to Matthews's books and records will be limited to information needed to verify that Matthews is and has been conducting Business Activities, and to verify the number of full-time employees at the Facility; provided, however, that the City shall not have the ability to obtain copies of Matthews's records or remove any information or documents from Matthews's files. Should any good faith dispute or question arise as to the validity of the data provided, the City reserves the right to require Matthews to obtain an independent firm to verify the information. This certified statement by an independent firm shall be provided at the sole cost of Matthews. City representatives may be accompanied by Matthews representatives and such inspections shall be conducted in such a manner as to (a) not unreasonably interfere with the operation of the Property or the Facility; and (b) comply with Matthews's reasonable security requirements.

M. During the Term of this Agreement, Matthews covenants and agrees to furnish each year, as applicable, the Chief Appraiser of Bexar Appraisal District with information outlined in Chapter 22, V.A.T.S. Tax Code, as amended, as may be necessary for the tax abatement and for appraisal purposes.

N. Matthews covenants and agrees that it shall provide the City's Director of Economic Development Department with a semi-annual certification from an officer of Matthews (a "Compliance Certificate") on or before January 31st and July 31st of each year during the Term of this Agreement (including the Recapture Period), attesting to, as of the preceding December 31st and June 30th respectively (each a "Reporting Period"):

- (i) the amount invested as of such date by Matthews and/or a Related Organization in Real Property Improvements and Personal Property Improvements;
- (ii) the number of Full-Time Jobs created and maintained as of such date by Matthews or a Related Organization and the hire and termination dates for the Full-Time Jobs,
- (iii) the compliance with the requirements of this Agreement with respect to the wages and healthcare benefits offered to all Full-Time Jobs and their respective eligible dependents, and
- (iv) the amount of money spent on internships, the internship program(s) utilized and the number of interns hired.

Matthews shall also submit this information to the City upon request, as deemed necessary at the sole discretion of the City, during the Term of this Agreement; provided, that, any such request shall not exceed four (4) requests per calendar year (inclusive of the required semi-annual Compliance Certificates). The Compliance Certificates provided shall be on

the form set forth in, or substantially similar to the form set forth in, Exhibit C (attached hereto and incorporated herein), as amended.

O. Matthews covenants and agrees to notify City in writing at least 30 days prior to any transfer or sub-lease of Matthews' leased premises on the Property during the Term. Nothing contained herein or in this Agreement shall limit Landlord's rights to sell, transfer, lease, assign, sublease, mortgage, pledge or otherwise encumber the all or any portion of the Property and no notice from Landlord shall be required; provided, however, that any assignment of the leasehold interest of Matthews in the leased premises on the Property during the Term shall require the City's approval pursuant to Article 11. City shall not unreasonably withhold approval of any requests for assignment of this Agreement by Matthews under Article 11 and any new transferee requesting assignment shall be bound by same. Failure to provide the required notification under this Article may render Matthews subject to the termination and recapture provisions under Article 7 without benefit of the Cure Period (as defined in Article 7(F)).

P. Matthews covenants and agrees to notify City in writing at least 30 days prior to Relocating or ceasing its Business Activities (as defined in Articles 7(A) and 7(C)). Failure to provide the required notification under this Article 5(P) may render Matthews subject to the termination and recapture provisions under Article 7 without benefit of the Cure Period (as defined in Article (7)).

Q. If, during this Agreement Matthews fails comply with any the provisions of this Article 5, including, but not limited to, to create and retain, in the aggregate, at least the minimum number of full-time jobs required under Article 5(A) of this Agreement, fails to pay at least the minimum wages required under Article 5(B) or provide health benefits as required by Article 5(D) of this Agreement for a period of two (2) or more consecutive months, then the termination and recapture provisions of Article 7 of this Agreement shall apply against Matthews.

R. If, during this Agreement, Matthews and/or Landlord allow its ad valorem taxes due on the land, real and/or personal property or inventory and supplies to become delinquent and fails to timely and properly follow the legal procedures for their protest and/or contest, such failure may render Matthews subject to the termination and recapture provisions under Article 7 without benefit of the Cure Period (as defined in Article 7(F)).

S. Matthews acknowledges City is subject to The Public Information Act, which applies to information of every "governmental body" as set forth in section 552.003(1)(A) of the Texas Government Code. Public Information means information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business. The Public Information Act requires a governmental body to promptly produce public information for inspection, duplication, or both upon receipt of a written request for information from the public. While the Public Information Act enumerates numerous exceptions to disclosure, Matthews acknowledges and agrees to the release of all information submitted by Matthews to City pursuant to a request for information. To that end, Matthews will endeavor to submit only such limited

information as is required per the agreement with the City to allow City to verify Matthews is meeting its requirements and obligations under this.

## 6. TAX ABATEMENT

A. So long as Matthews performs its Business Activities in the leased premises at the Property and otherwise performs all obligations set forth in Article 5 above, the tax abatement period (the “Abatement Term”) for the Real Property Improvements and Personal Property Improvements shall be TEN (10) consecutive years beginning on January 1, 2022. The value of the Real Property Improvements and Personal Property Improvements existing and located upon the Property prior to the Effective Date of this Agreement shall be determined as of January 1, 2021 (the “Base Year”). The “Base Year Value” of the Property, real property and personal property not covered by this Agreement shall be its assessed value (determined by the Bexar Appraisal District) prior to the Matthews’s acquisition or lease of such and as of January 1, 2021 of the Base Year. This Agreement only provides for the abatement of taxes on the value above the Base Year Value on any real property constructed or installed after the Effective Date of this Agreement and tangible personal property brought onto the site after the Effective Date of this Agreement.

B. At the commencement of the Abatement Term, Matthews shall lease, have an interest in, or otherwise control the leased premises on the Property and shall be conducting its Business Activities on a daily basis and continuously throughout the Term of this Agreement.

C. Provided that Matthews has invested or caused to be invested the minimum amounts in Real Property Improvements and Personal Property Improvements (as described in Article 5(A)) of this Agreement by December 31, 2024, has hired and retained the number of employees specified in Article 5(A), pays at least the minimum wages required under Article 5(B), offers all full-time employees an opportunity to participate in a healthcare benefits package (as described in Article 5(D)), uses the leased premises at the Property for its Business Activities, and is otherwise in compliance with the conditions of this Agreement, then SEVENTY-FIVE PERCENT (75%) of the ad valorem taxes for the Real Property Improvements and Personal Property Improvements above the Base Year Value, shall be abated for the Abatement Term of this Agreement. There shall be no abatement of taxes for the underlying land value, inventory, or supplies.

D. Matthews and Landlord acknowledge and agree that the Base Year Value of the Real Property Improvements and Personal Property Improvements and the tax levy based on said Base Year Value of the Real Property Improvements and Personal Property Improvements in the Zone shall not decrease, but taxes may increase and that the amount of property taxes paid by Matthews and Landlord to the City attributable to the Property during the Abatement Term shall not be less than the amount of taxes attributable to the Property paid to the City for the Base Year tax year, if any, except in the event of casualty or condemnation of the Real Property Improvements and Personal Property Improvements in the Reinvestment Zone.



E. Subject to the Lease, Matthews and Landlord shall have the right to protest appraisals of the Property, real or personal, or any portion thereof, over and above the Base Year Value as applicable. Matthews shall provide City written notice of such protest and of the final amount assessed by the Bexar County Appraisal District.

F. The Term of this Agreement includes the Abatement Term and the Recapture Period. The Recapture Period shall be the period between the end of the Abatement Term and the sixth (6th) calendar year after the expiration of the Abatement Term (the "Recapture Period"). The term of this Agreement (the "Term") shall commence on the Effective Date and shall continue in force and effect, unless terminated pursuant to the provisions of this Agreement until the end of the sixth (6<sup>th</sup>) calendar year after the expiration of the Abatement Term.

## 7. **DEFAULT/TERMINATION/RECAPTURE**

A. For purposes of this section, "Relocation" or "Relocate" shall mean Matthews, or a Related Organization which has taken the place of Matthews, transferring substantially all Business Activities to a location outside the Reinvestment Zone.

B. Should Matthews occupy and use the leased premises at the Property for its Business Activities and subsequently Relocate (as defined in this Article 7(A)) during the Term, unless such Relocation is caused by a Force Majeure, as defined in Article 8, then City shall have the right to terminate this Agreement. Said termination shall be effective for the calendar year during which the Relocation occurred. Unless Matthews presents credible evidence to clearly indicate a date of Relocation, City's determination shall be final and conclusive.

Upon termination, any and all taxes otherwise abated for that calendar year and all previously abated taxes under this Agreement shall be recaptured by City from Matthews and City shall be entitled to the payment of such recaptured taxes, calculated pursuant to Article 7(H), from Matthews within sixty (60) calendar days from the date it notifies Matthews in writing of termination of this Agreement.

C. If Matthews occupies and uses the leased premises at the Property for its Business Activities and subsequently ceases conducting Business Activities (or a substantial portion thereof) at the site for a continuous period of three (3) months during the Term of this Agreement for any reason, except if such cessation is caused by a Force Majeure as defined in Article 8, then the City shall have the right to terminate this Agreement. Said terminations shall be effective for the calendar year during which the leased premises at the Property was no longer used for the required purposes stated herein. Unless Matthews presents credible evidence to clearly indicate a date of cessation, City's determination of a date of cessation shall be final and conclusive.

Upon termination, any and all taxes otherwise abated for that calendar year and all previously abated taxes under this Agreement shall be recaptured by City from Matthews

and City shall be entitled to the payment of such recaptured taxes, calculated pursuant to Article 7(H), from Matthews within sixty (60) calendar days from the date it notifies Matthews in writing of termination of this Agreement.

D. If Matthews, a Related Organization or City-approved assignee fails to hire and the minimum number of permanent Full-Time Jobs as required in Article 5(A) in the leased premises at the Property as described, for any given year during the Abatement Term, calculated by the averaging of the two most current semi-annual Compliance Certification, or substantially similar form, (Exhibit C) for such calendar year of noncompliance, then for each such calendar year of noncompliance, the tax abatement for the Real property Improvements and the Personal Property Improvements shall be reduced in the following tax year by the same percentage as the deficiency in the number of employees in the leased premises at the Property. *For example*, if Matthews hires and retains ninety percent (90%) of the minimum number of Full-Time Jobs in the leased premises at the Property in a given year, Matthews and Landlord shall be entitled to ninety percent (90%) of its ad valorem real and personal property tax abatement for the Property for the following year.

However, should Matthews fail to hire and retain at least fifty percent (50%) of the minimum number of Full-Time Jobs in the leased premises at the Property in any year of the Abatement Term, (the "Minimum Threshold") then, at the option of City, this failure may be grounds for termination of this Agreement. Said termination shall be effective for the calendar year during which the number of permanent Full-Time Jobs in the leased premises at the Property as required by this Agreement has not been met as required.

Upon termination, any and all taxes otherwise abated for that calendar year and all previously abated taxes under this Agreement shall be recaptured by City from Matthews and City shall be entitled to the payment of such recaptured taxes, calculated pursuant to Article 7(H), from Matthews within sixty (60) calendar days from the date it notifies Matthews in writing of termination of this Agreement.

E. If Matthews fails to maintain one hundred percent (100%) of the minimum number Full-Time Jobs as required in Article 5(A) during the Recapture Period, then, at the option of City, this failure may be grounds for termination of this Agreement.

Upon termination, any and all taxes otherwise abated for that calendar year and all previously abated taxes under this Agreement shall be recaptured by City and City shall be entitled to the payment of such recaptured taxes within sixty (60) calendar days from the date it notifies Matthews in writing of termination.

F. Subject to Article 7(D), during the Term, City may declare a default if Matthews fails to comply with any of the terms of this Agreement. Should City determine Matthews is in default under any of the terms of this Agreement; City will notify Matthews in writing at the address below in Article 9. If said default is not cured within sixty (60) calendar days from the date of such notice (hereinafter the "Cure Period"), then City shall have the right to terminate this Agreement. City may, in its sole discretion, extend the Cure Period if Matthews commences the cure within the Cure Period and Matthews is diligently

pursuing such cure. If the Agreement is terminated as a result of default, all taxes abated shall be due for the tax year during which the termination occurred and shall accrue without further abatements for all tax years thereafter; in addition, City shall have the right to recapture from Matthews all previously abated property taxes under this Agreement, calculated pursuant to Article 7(H) and said taxes shall be paid by Matthews within sixty (60) calendar days of receiving City's written notification of recapture.

G. **Other Remedies Available.** Unless otherwise stated herein, City shall have the right to seek any remedy at law to which it may be entitled, in addition to termination and/or recapture, if Matthews defaults under the terms of this Agreement. However, such termination and/or recapture shall be subject to any and all lawful offsets, settlements, deductions or credits to which Matthews may be entitled. The termination and/or recapture of taxes provided in this Article 7 are not applicable to situations involving minor changes to the description of the Property, or changes in ownership or in management thereof, so long as Matthews, a Related Organization or its City-approved successor or assignee continues conducting Business Activities or other authorized activities at the Property as provided hereinabove.

H. **Calculation of Taxes Subject to Recapture.** If Matthews fails to comply with any of the terms of this Agreement including, but not limited to, those pertaining to this Article 7, then the City shall have the right to recapture from Matthews a percentage of the abated taxes based on the following table:

TERM YEAR	TOTAL TAX PREVIOUSLY ABATED SHALL BE MULTIPLIED BY:
1-10 (Abatement Term)	100%
11	100%
12	80%
13	60%
14	40%
15	20%
16	10%

FORMULA: The recapture formula shall be:

Total Taxes Abated X Applicable percentage from above schedule = Amount to be recaptured

City shall recalculate the amount of recapture pertaining to each tax year utilizing the above formula. A bill for each year will then be sent to Matthews.

**8. AUTHORIZED RELIEF FROM PERFORMANCE (Force Majeure)**

For purposes of this Agreement, "Force Majeure" is defined as (i) an act of God or natural disaster, (ii) the outbreak of war, political unrest or a labor strikes (in jurisdictions and/or industries related to the supply chain or labor force required for Matthews to conduct its Business Activities), (iii) explosion or other casualty or accident which is not the result of negligence, intentional act or misconduct on the part of Matthews, or (iv) other non-natural events which are beyond the control of the Matthews and which have a direct adverse impact on its Business Activities. In addition to relief expressly granted in this Agreement, City shall grant a waiver from performance of the obligations of this Agreement if Matthews is prevented from compliance and performance by an event of Force Majeure. The burden of proof for the need for such relief shall rest upon Matthews. To obtain release based upon this Article 8, Matthews must file a written request with the City's Economic Development Department for processing to City Council for a decision, authorized by a duly approved Ordinance.

**9. NOTICE**

Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if: (a) delivered in person to the address set forth herein below for the party to whom the notice is given; (b) placed in the United States mail with postage prepaid, return receipt requested, properly addressed to such party at the address hereinafter specified; or (c) deposited, with fees prepaid, into the custody of a nationally recognized overnight delivery service such as FedEx, addressed to such party at the address hereinafter specified. Any notice mailed in the above manner shall be effective upon its deposit into the custody of the United States Postal Service or such nationally recognized delivery service as applicable; all other notices shall be effective upon receipt. From time to time, either party may designate another address for all purposes under this Agreement by giving the other party no less than ten (10) calendar days advance written notice of such change of address in accordance with the provisions hereof.

TO MATTHEWS:

- (Whether personally delivered or mailed):

TO LANDLORD

- (Whether personally delivered or mailed):

TO CITY:

- If mailed:

Economic Development Department  
Attn: Director  
P.O. Box 839966  
San Antonio, Texas 78283-3966

- If by personal or overnight delivery:

Economic Development Department  
Attn: Director  
Frost Bank Tower  
100 W. Houston St., 19<sup>th</sup> Floor  
San Antonio, Texas 78205

**10. CONDITION**

This Agreement is conditioned entirely upon the approval of the San Antonio City Council, as evidenced by duly approved Ordinance Number \_\_\_\_\_, dated \_\_\_\_\_, 2021.

**11. ASSIGNMENT**

Except as otherwise expressly provided herein, this Agreement may be assigned or otherwise transferred only with City Council's prior approval (which approval shall not be unreasonably withheld), as reflected in a duly adopted ordinance. Matthews must submit a written request to City for approval of the proposed assignment or other transfer at least thirty (30) days prior to the effective date of the assignment or transfer of any part of its leasehold interest in the leased premises in the Property; however, no City Council consent is required for an assignment or transfer to a parent of Matthews, a subsidiary of Matthews, an affiliate entity of Matthews, or to any new entity created as a result of a merger, acquisition or other corporate restructure or reorganization of Matthews or a related organization. However, Matthews shall give City prior written notice of all assignments or other transfers that do not require City Council consent, as required under Article 5(J). All future assignees shall be bound by all terms and/or provisions and representations of this Agreement.

**12. GENERAL PROVISIONS**

A. None of the property improvements described in this Agreement are financed by tax increment bonds.

B. This Agreement is entered into subject to the rights of the holders of outstanding bonds of the CITY related to this project. No bonds for which the CITY is liable have been used to finance this project.

C. No amendment, modification, or alteration of the terms hereof shall be binding unless in writing dated subsequent to the date of this Agreement and duly authorized by the parties. The Director of the Economic Development Department, or any successor City department, shall have the ability, without further City Council approval, to execute amendments for minor changes to this Agreement and to implement the remedies made available to City hereunder. Any substantial changes to this Agreement shall require City Council approval.

**13. SEVERABILITY**

In the event any section, subsection, paragraph, subparagraph, sentence, phrase or work herein is held invalid, illegal or unenforceable, the balance of this Agreement shall stand, shall be enforceable and shall be read as if the parties intended at all times to delete said invalid section, subsection, paragraph, subparagraph, sentence, phrase or word. In such event there shall be substituted for such deleted provisions a provision as similar as possible in terms and in effect to such deleted provision that is valid, legal and enforceable. This Agreement constitutes the entire Agreement between the parties hereto relating to the subject matter contained herein and supersedes all prior, oral or written agreements, commitments or understandings with respect to the matters provided for herein.

**14. ESTOPPEL CERTIFICATE**

Any party hereto may request an estoppel certificate related to this project (hereafter referred to as "Certificate") from another party hereto so long as the Certificate is requested in connection with a bona fide business purpose. The Certificate, which if requested, will be addressed to a subsequent purchaser or assignee of Matthews or other party designated by Matthews which shall include, but not necessarily be limited to, statements that this Agreement is in full force and effect without default, if such is the case, the remaining Term of this Agreement, the levels of tax abatement in effect, and such other matters reasonably requested by the party(ies) to receive the Certificate.

**15. OWNER STANDING**

Matthews and Landlord, each as a party to this Agreement, shall be deemed a proper and necessary party in any litigation questioning or challenging the validity of this Agreement or any of the underlying ordinances, resolutions, or City Council actions authorizing same, and Matthews shall be entitled to intervene in said litigation.

**16. APPLICABLE LAW**

This Agreement shall be construed under the laws of the State of Texas and is performable in Bexar County, Texas, the location of the Reinvestment Zone.

**17. CONFLICTS OF INTEREST.**

Matthews warrants and undertakes that no council member, employee or agent of City will receive from or give to any director, employee or agent of Matthews any commission, fee, rebate, or any gift or entertainment of significant cost or value in connection with this Agreement except as expressly provided for in the Agreement. Matthews shall promptly notify City any breach of this Article and any consideration received as a result of such breach shall be paid over or credited to Matthews, without prejudice to the right of Matthews to seek compensation or claim damages or any other rights that Matthews may have under applicable law.

**18. DUPLICATE ORIGINALS**

This Agreement shall be executed in two duplicate originals, with a duplicate original going to each party.

*Signatures appear on next page.*

**EXECUTED** and **AGREED** to as of the \_\_\_\_\_ day of \_\_\_\_\_, 2021  
(the "Effective Date").

**CITY OF SAN ANTONIO,**  
a Texas Municipal Corporation

\_\_\_\_\_  
Erik Walsh  
CITY MANAGER


ATTEST:

\_\_\_\_\_  
Tina J. Flores  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY

**MATTHEWS INTERNATIONAL  
CORPORATION**

  
\_\_\_\_\_  
Name: GREGORY S. BATE  
Title: CTO

**AGARITA PROFIT STREET LLC**

\_\_\_\_\_  
Name:  
Title:



**EXHIBIT A: PROPERTY DESCRIPTION**

## EXHIBIT B: EMPLOYEE BENEFITS

**EXHIBIT C: COMPLIANCE CERTIFICATION FORM**

