

STATE OF TEXAS §

COUNTY OF EL PASO §

TAX ABATEMENT AGREEMENT

This **TAX ABATEMENT AGREEMENT** (“**Agreement**”) is entered into by and between the **CITY OF EL PASO, TEXAS** (the “**City**”), a home rule municipality organized under the laws of the State of Texas, and **WORLDWIDE LLC**, a Delaware limited liability company, d/b/a Statue LLC (“**Company**”). The City and the Company are sometimes referred to herein collectively as the “**Parties**” and each individually as a “**Party**”.

RECITALS

A. On October 24, 2023, the City Council of the City (the “**City Council**”) adopted a resolution, stating that the City elects to be eligible to participate in tax abatement and setting forth guidelines and criteria governing tax abatement agreements entered into between the City and various parties, entitled “City of El Paso Guidelines and Criteria for Tax Abatement Assistance” (the “**Policy**”).

B. The Policy contains appropriate guidelines and criteria governing tax abatement agreements to be entered into by the City as contemplated by Chapter 312 of the Texas Tax Code, as amended (the “**Code**”).

C. The Company is considering the purchase of approximately 1,038.948 acres of Land (defined herein) owned by the City and located on the northside of Stan Roberts Sr. Avenue, West of U.S. Highway 54 in the City. As of the Effective Date, the Land is located entirely within Reinvestment Zone No. 1, City of El Paso, Texas (the “**Zone**”) established by the City Council on November 21, 2023 by Ordinance No. 019562 (the “**Ordinance**”).

D. If Company acquires the Land, contingent upon receipt of the tax abatement herein, Company proposes to construct in one or more phases, which may extend over a period of years, one or more Data Center(s) (as defined herein), as well as certain accessory uses or buildings located on the Land and other related or associated uses, buildings or structures such as utility buildings, structures, improvements and appurtenants located on the Land (collectively, the “**Project**”).

E. Company’s proposed Project, including its proposed construction of the Project Improvements (defined herein), will benefit the City by developing currently vacant land into a viable commercial operation with significant opportunities for employment and tax base growth. In recognition of the potential economic benefits that will accrue to the City as a result of the proposed Project, the City desires to enter into

this Agreement to provide economic incentives in return for verifiable commitments from Company with regard to improvements, employment and other benefits to be made or invested in the City.

F. The City has an interest in partnering with companies that give back to the local community and Company is a business that has a track record of being a good business partner.

G. The development of the Land and the terms of this Agreement are consistent with encouraging development of the Zone and generating economic development and increased employment opportunities in the City, in accordance with the purposes for creation of the Zone, and are in compliance with the Policy, the Ordinance and all other applicable laws, ordinances, policies, rules and regulations.

H. The provisions of this Agreement, and the nature of capital investment related thereto satisfy the eligibility criteria for tax abatement pursuant to Section IV of the Policy.

I. Written notice that the City intends to enter into this Agreement, along with a copy of this Agreement, as applicable, has been furnished in the manner prescribed by the Code, including without limitation to the presiding officers of the governing bodies of each of the taxing units that have jurisdiction over the Land.

J. The abatement granted under this Agreement is in conjunction with a broader economic development program governed by that certain 380 Economic Development Agreement between the City and Company pursuant to Chapter 380 of the Texas Local Government Code (the “**380 Program Agreement**”) to be executed substantially concurrent with this Agreement.

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. INCORPORATION OF RECITALS.

The City Council has found, and the City and Company hereby agree, that the recitals set forth above are true and correct and form the basis upon which the Parties have entered into this Agreement.

2. DEFINITIONS.

In addition to any terms defined in the body of this Agreement, the following terms shall have the definitions ascribed to them as follows:

380 Program Agreement has the meaning ascribed to that term in Recital J.

Abatement means (i) the abatement of eighty percent (80%) of the City's incremental ad valorem real property taxes on the Land and all improvements located on the Land, based on the increase in values of the Land and all improvements located on the Land over their values for the 2023 tax year (which is the year in which the Parties entered into this Agreement); and (ii) the abatement of eighty percent (80%) of the City's ad valorem taxes on Personal Property, based on the Taxable Value of the Personal Property.

Abatement Period for each Phase, respectively, shall mean a period of ten (10) calendar years beginning in the First Year of Abatement for each Phase, as applicable.

Affiliate means all persons or entities, incorporated or otherwise, under common control with, controlled by or controlling Company.

Applicable City Rules means all of the rules, regulations, ordinances and official policies of the City in force and effect.

Annual Area Median Wage means the median hourly wage as determined by the Bureau of Labor Statistics' Occupational Employment and Wage Statistics Program for all occupations within the El Paso Metropolitan Statistical Area, as adjusted on January 1st of each applicable calendar year, and multiplied by 2,080 hours; provided, however that in no event shall the applicable median hourly wage used to calculate the Annual Area Median Wage be less than the 2022 median hourly wage as currently established for the El Paso Metropolitan Statistical Area, which is \$16.43.

Annual Compliance Certificate has the meaning ascribed to that term in Section 4.4.4.

Business Day shall mean a day that is not a Saturday, Sunday or legal holiday in the State of Texas. All other references to "days" hereunder shall mean calendar days.

City Council has the meaning ascribed to that term in Recital A.

Code has the meaning ascribed to that term in Recital B.

Commencement of Construction shall mean when clearing and grading on the land has commenced.

Commencement of Vertical Construction shall mean when Company or an Affiliate has executed a construction contract and commenced or caused the commencement of installation of footings for buildings to begin vertical construction on the Land.

Completion Date means the date as of which Company receives a temporary or permanent certificate of occupancy for one or more buildings or portion of a building on the Land. The Completion Date must occur on or before the Completion Deadline.

Completion Deadline means seven (7) years from the Commencement of Vertical Construction, subject to extension on account of Force Majeure, as provided in Section 23.

Comprehensive Plan means the City's Plan El Paso Comprehensive Plan, adopted pursuant to Ordinance No. 017751, adopted by the City Council on March 6, 2012.

Confidential Business Information has the meaning ascribed to that term in Section 19.

Construction Costs means the aggregate of the following costs expended or caused to be expended by or on behalf of Company or an Affiliate relating to construction and installation of Project Improvements and related infrastructure, including costs such as land acquisition; site development and construction costs; general contractor and subcontractor fees; the costs of supplies, materials and construction labor; buildings (foundation, interior, and exterior improvements); structures; utilities; paving; grading; demolition; environmental remediation; lighting; signage; landscaping; engineering fees and costs; surveying costs; fees of consultants; architectural and design fees; legal fees; financing costs and fees; zoning fees; building permit, development, and other city fees (if applicable); sewer basin fees; water and sewer tap fees; water, wastewater and thoroughfare impact fees (if applicable); insurance and taxes directly related to the construction of the Project Improvements; and other costs and fees for the construction and completion of the Project Improvements (or portion thereof).

Contract of Sale for the Land means that certain Contract of Sale for the Land entered into between the City as seller and Company as buyer, effective as of December 5, 2023, as may be amended.

Data Center means one or more data centers and/or other facilities used to house, and in which are operated, maintained and replaced from time to time, computer systems and associated components, such as telecommunications and storage systems, cooling systems, power supplies and systems for managing property performance (including generators and mechanical and electrical yards), and equipment used for the transformation, transmission, distribution and management of electricity (including private substations), internet-related equipment, data communications connections, private communication towers, environmental controls and security devices, structures and site features, as well as certain accessory uses or buildings located on the land and other related or associated uses, buildings or structures such as utility buildings; private utility facilities; office(s); buildings for support staff; warehousing for logistics, storage and/or other similar uses; cafeteria; guardhouse; diesel storage tanks; fuel storage for emergency generators; water storage tanks; security fencing; and other structures, improvements and appurtenants.

Effective Date has the meaning ascribed to it in Section 3.

El Paso Certified M/WBE Company means an El Paso Company that has received certification as either a minority-owned business enterprise (MBE), a woman-owned business enterprise (WBE) or a disadvantaged business enterprise (DBE) by the El Paso Hispanic Chamber.

El Paso Company(ies) means a business that has a principal business office located within the corporate limits of the City; and from such principal business office, performs a function or provides a service useful or necessary for construction of the Project Improvements. For the purposes of this definition, a “principal” office does not mean its headquarters and can be one of multiple offices throughout the State of Texas and/or the United States maintained by such company. An El Paso Company may or may not also be classified as an El Paso Certified M/WBE Company.

Employment Commitment has the meaning ascribed to it in Section 4.3.

Employment Commitment Date has the meaning ascribed to it in Section 4.3.

Employment Report has the meaning ascribed to it in Section 4.4.2.

EPCAD means the El Paso Central Appraisal District.

First Year of Abatement (i) for the Initial Project Improvements, shall mean the calendar year following the year in which Company provides the City with the Initial Completion Report; and (ii) for each Subsequent Phase, shall mean the calendar year following the year in which the Company provides the City with the Subsequent Investment Report for such Subsequent Phase, as applicable.

Force Majeure shall mean any delay due to any of the following acts or events: (i) transportation disasters, whether by sea, rail, air or land; (ii) strikes, lockouts, work stoppage or slowdown or other labor disputes or material shortages; (iii) actions or failures to act of a governmental authority, including any changes to the plans and specifications required as a condition to issuance of any permits or any changes in laws or codes not reasonably foreseeable, and any delay in issuance of necessary permits by any governmental authority having jurisdiction, including unreasonable delays by the City (based on the then-current workload of the City department(s) responsible for undertaking the activity in question) in issuing any permits, consents, or certificates of occupancy or conducting any inspections of or with respect to the Land and Project Improvements, but excluding delays due to work conditions that violate applicable codes and regulations; (iv) adverse weather conditions, including rain of unusual duration or volume, hurricanes, lightning, tornadoes, earthquakes, floods or the acts of God; (v) epidemics or pandemics (including the COVID-19 pandemic) or any governmental orders, actions, shut-downs, mandates, restrictions or quarantines, or any quasi-governmental orders, actions, shut-downs, mandates, restrictions or quarantines resulting from any epidemics or pandemics, and any public health emergencies, whether declared by local, state or federal governmental authorities or agencies; (vi) wars, terrorism, civil disturbances, riots, insurrections, civil unrest, vandalism and sabotage; (vii) labor shortages or moratoriums; (viii) fire or other material casualty; (ix) mechanical failure of

equipment; (x) utility delays or interruptions; (xi) any emergency event that threatens imminent harm to property or injury to persons; (xii) any force majeure event or excusable delay under the general contractor's construction contract; (xiii) discovery or remediation of an environmental issue on the Land; (xiv) inability or delay in obtaining a permit or approval required for construction of Project Improvements; (xv) inability or delay in obtaining any easements needed for the Project or improvements related to the Project; and (xvi) any other causes of any kind whatsoever, whether similar to those enumerated or not, which are beyond the control of such Party in the performance of its obligations hereunder.

Full-Time Job means a job located at or based out of the Project Improvements that: (i) is filled by an individual for (a) forty (40) hours per week or (b) less than forty (40) hours per week if such other measurement is used by Company or an Affiliate to define full-time employment in accordance with its then current personnel policies and regulations (including paid time off); and (ii) pays at least the Annual Area Median Wage. For example, if Company or an Affiliate has a company-wide policy that considers full-time employment to be thirty-five (35) hours per week, a job provided by Company or an Affiliate for at least thirty-five (35) hours per week shall be considered a Full-Time Job. A Full-Time Job is considered "based out of" the Project Improvements if the Full-Time Job is on the payroll at such location. A Full-Time Job may include remote employees so long as the remote employees are Regional Residents.

Initial Completion Report is defined in Section 4.4.1.

Initial Project Improvements means the first building, portion of a building, or group of buildings to be constructed and completed on the Land (including any Personal Property located therein) which meets the Investment Commitment, and may be designated by Company as the Initial Project Improvements (also referred to as Phase 1) or otherwise considered a part of the Initial Project Improvements in accordance with the terms of this Agreement, including but not limited to Section 4.2 herein.

Initial Project Improvements Boundary means the physical boundary in which the Initial Project Improvements are located, as identified by metes and bounds and a survey map provided by Company. The Initial Project Improvements Boundary shall be within Company's sole discretion.

Investment shall mean costs expended by or on behalf of Company or an Affiliate for (i) Construction Costs, and/or (ii) Personal Property.

Investment Commitment has the meaning ascribed to that term in Section 4.1.

Land means the real property described on **Exhibit "A"** which is attached hereto and incorporated herein by reference for all purposes under this Agreement, plus any additional land within a half-mile radius of the real property boundaries referenced on **Exhibit "A"** (i) located within the Zone or another reinvestment zone, and (ii) that is acquired by Company or an Affiliate subsequent to the Effective Date. If Company or an Affiliate acquires any such additional land, upon notice thereof to the City, this

Agreement shall automatically apply with respect thereto, and the definition of “Land” hereunder shall include such additional property regardless of whether the legal description of such additional property is attached hereto.

Mortgage means a mortgage, deed of trust, sale and leaseback or other form of secured financing.

Mortgagee means the holder of a Mortgage on the Land.

Ordinance has the meaning ascribed to it in Recital C.

Personal Property means any personal property that (i) is subject to ad valorem taxation and is rendered for that purpose to the appraisal district having jurisdiction over the Land; (ii) is located on the Land (or within improvements on the Land); and (iii) was not located in the City prior to the Effective Date.

Phase means the Initial Project Improvements and any Subsequent Phase, as applicable. The total number of Phases eligible for Abatement as described hereunder shall be limited to five (5) Phases. Each Phase will require one or more separately identifiable Tax Account(s) as further described in Section 4.2 herein.

Phase 1 means the Initial Project Improvements.

Policy has the meaning ascribed to that term in Recital A.

Project Improvements means improvements constructed on the Land.

Project has the meaning ascribed to that term in Recital D.

Project Improvements means improvements constructed or caused to be constructed on the Land by Company and/or an Affiliate.

Regional Resident(s) means individuals who reside (1) within El Paso County, Texas and/or (2) at any location within fifty (50) miles of the Land.

Reports means the Initial Completion Report, the Employment Report, and the Subsequent Investment Report(s) (if any).

Subsequent Investment Report or **Subsequent Investment Reports** has the meaning ascribed to that term in Section 4.4.3.

Subsequent Investment Threshold has the meaning ascribed to that term in Section 4.4.3.

Subsequent Phase means any building, portion of a building, or group of buildings (including any Personal Property located therein) constructed and completed on the Land subsequent to the Initial Project Improvements which meets the Subsequent Investment Threshold, and may be designated by Company or otherwise considered part of a Subsequent Phase in accordance with the terms of this Agreement, including but not

limited to Section 4.2 herein. Any Subsequent Phase(s) will be numbered in sequential order of development by Company in its discretion. By way of example, the second Phase shall be “Phase 2,” the third Phase shall be “Phase 3,” and so on and so forth. There is not a limit on the number of Phases.

Subsequent Phase Boundary means the physical boundary or boundaries in which a Subsequent Phase is located, as identified by metes and bounds and survey map(s) provided by Company. The Subsequent Phase Boundary shall be within Company’s sole discretion.

Tax Account means a business personal property account or a real property account established with and/or recognized by EPCAD or its successor that has an identifying property ID number.

Taxable Value means the appraised value as certified by the El Paso County Appraisal District, or its successor, as of January 1 of a given year.

Taxes means any and all taxes, special taxes, assessments, levies, impositions, duties, deductions, withholding, charges and fees, including those imposed with respect to any assessment districts, infrastructure financing, community facilities districts, community taxing districts, maintenance districts or other similar districts.

Term has the meaning ascribed to that term in Section 3.

TPIA has the meaning ascribed to that term in Section 19.

Water and Wastewater Agreement means that certain Water and Wastewater Agreement between the Company and the El Paso Water Utilities Public Service Board, a component unit of the City (“**EPWater**”), pursuant to which EPWater agrees to provide water and wastewater services and certain infrastructure for the Project, all as more particularly described therein.

Zone has the meaning ascribed to that term in Recital C.

3. **TERM.**

This Agreement will take effect on the last date of execution of this Agreement by all Parties (the “**Effective Date**”) and, unless terminated earlier in accordance with its terms and conditions, will expire thirty-five (35) years from the Effective Date (the “**Term**”). The Company may at any time and for any reason terminate this Agreement automatically upon notice thereof to the City, and upon such termination this Agreement shall be null and void and the Parties shall have no further rights or obligations with respect hereto.

4. **COMPANY’S OBLIGATIONS AND COMMITMENTS.**

4.1 **Investment Commitment.**

As conditions to receipt of the Abatement, subject to Force Majeure in accordance with Section 23 herein, (i) the Commencement of Construction must occur within five (5) years of the Effective Date; (ii) the Completion Date must occur on or before the Completion Deadline, and (iii) Company must expend or cause the expenditure by the Completion Deadline of an Investment of at least Eight Hundred Million Dollars (\$800,000,000.00) (the “**Investment Commitment**”). For the avoidance of doubt, the same Investment counted and reported for purposes of measuring attainment of the Investment Commitment under this Agreement will also be counted for purposes of measuring attainment of the Investment Commitment under the 380 Program Agreement.

4.2 Phasing; Timing of Development.

Company may develop the Land in one or more Phases extending over a period of years; and, if so, Company shall be eligible for separate Abatements for each Phase as provided herein, for up to five (5) Phases. Each Phase shall have a separate Abatement Period. Abatement Periods for separate Phases may run concurrently or sequentially. Company will designate separate Phases by providing notice to the City (a “**Designation Notice**”), which notice(s) may describe the Initial Project Improvements Boundary or a Subsequent Phase Boundary, as applicable, to describe what constitutes a Phase, without the necessity of further approval or signature of the Parties, with such updates being sequentially numbered. Along with the Designation Notice, Company will provide the applicable property ID number(s) for the Tax Account(s) applicable to such Phase. Company will work with EPCAD to establish one or more separate Tax Account(s) to distinguish the Land, Project Improvements and Personal Property that make up each Phase. Company may adjust the Initial Project Improvements Boundary or a Subsequent Phase Boundary to include additional land (and improvements/Personal Property thereon) not included in the initial boundaries of such Phase by providing notice of such boundary adjustment and updated legal description, survey map and applicable Tax Account information to the City. If Company completes new Investment after submitting the Initial Completion Report, but does not designate any Subsequent Phases, then all improvements on the Land (including all Personal Property) will be considered a part of Phase 1 and subject to the Abatement for the Phase 1 Abatement Period. Upon the City’s request, Company will provide any reasonable Tax Account information needed to determine the amount of the Abatement. Similarly, if Company designates Subsequent Phases and then later completes or installs additional improvements on the Land (including Personal Property) that were not designated as part of a Phase, such improvements shall be considered a part of the final Phase that Company designated and will receive the Abatement for the remainder of the Abatement Period for such final Phase. Upon the City’s request, Company will provide reasonable Tax Account information needed to determine the amount of the Abatement. By way of example, if Company designates five (5) Phases and then completes additional improvements and/or installs additional Personal Property, then all such additional improvements and/or Personal Property will be considered a part of Phase 5 and will be eligible to receive the

Abatement for the remaining Abatement Period for Phase 5. There is no cap on the amount of Investment or improvements that may constitute a Phase (e.g., what constitutes a Phase is not limited by the Investment reported in the Initial Completion Report or Subsequent Investment Report for each such Phase, as applicable).

The Designation Notice for Phase 1 may be (but is not required to be) provided in the Initial Completion Report. A Designation Notice for a Subsequent Phase may be (but is not required to be) provided in a Subsequent Investment Report. Notice of designation of a Phase under the 380 Program Agreement may also count as notice for designation of a Phase under this Agreement. Notwithstanding any statement to the contrary herein, all terms, conditions and obligations of this Agreement shall apply to each Phase independently.

The City acknowledges that as of the Effective Date, the Company cannot predict if, when or at what rate the development of the Project will occur, which will depend upon numerous factors, including factors outside of the control of the Company, such as market orientation and demand, competition, availability of qualified laborers and weather conditions. The Company may develop the Project Improvements in such order and at such rate and times as the Company deems appropriate in its sole and absolute discretion, which the City agrees is consistent with the intent, purpose and understanding of the Parties. Nothing in this Agreement shall be construed to require the Company to proceed with developing the Project Improvements or any Phase or portion thereof; however, development of the Project Improvements (or Phase or portion thereof) in accordance with the terms of this Agreement is a condition precedent to receipt of the Abatement (for each Phase, as applicable).

4.3 Employment Commitment.

Within four (4) years following the Completion Deadline (“**Employment Commitment Date**”), Company will provide or cause to be provided at least fifty (50) Full-Time Jobs (the “**Employment Commitment**”). Thereafter, Company will maintain at least fifty (50) Full-Time Jobs during any remaining Abatement Period in which a Phase is receiving the Abatement. The Full-Time Jobs that are counted for the Employment Commitment are cumulative and may include Full-Time Jobs for any Phase. Otherwise stated, the fifty (50) Full-Time Jobs required herein is a total of at least fifty (50) Full-Time Jobs for all Phases combined (and it is not required to have fifty (50) Full-Time Jobs for each separate Phase). Jobs as of December 31 of the year they were created may be included for reporting purposes if they otherwise meet the requirements of being a Full-Time Job. Full-Time Jobs counted for purposes of measuring attainment of the Employment Commitment under this Agreement will also be counted for purposes of measuring attainment of the Employment Commitment under the 380 Program Agreement. Nothing in this Agreement shall be construed to require the Company to achieve the Employment Commitment; however, after the Employment Commitment Date, the Employment Commitment is a condition to receipt of the

full Abatement (for each Phase, as applicable). Failure to meet the Employment Commitment will have no effect on Abatement(s) already provided prior to the Employment Commitment Date, if any.

4.4 Reports and Filings.

4.4.1 Initial Completion Report.

Provided that the Completion Date occurred on or before the Completion Deadline, on or before April 30 of the first full calendar year following the calendar year in which the Completion Deadline occurs, Company must provide a written report to the City, substantially in the form attached hereto as **Exhibit “B”**, that confirms Company achieved the Investment Commitment (the **“Initial Completion Report”**). For the avoidance of doubt, in order to satisfy the reporting requirement for receipt of the Abatement for the Initial Project Improvements, Company is only required to submit sufficient documentation in the Initial Completion Report to show that at least \$800,000,000.00 in Investment was achieved (and shall not be required to submit additional documentation for any Investment that exceeds \$800,000,000.00). Provision of the Initial Completion Report under the 380 Program Agreement will also constitute provision of the Initial Completion Report under this Agreement. If the Completion Date occurs in a year prior to the year of the Completion Deadline, Company may submit the Initial Completion Report in an earlier year, in its sole discretion.

4.4.2 Employment Report.

On or before April 30 of the first full calendar year following the year in which the Employment Commitment Date occurs, Company must provide the City with a report that sets forth the total number of individuals who held Full-Time Jobs as of December 31 of the previous year, in the form attached hereto as **Exhibit “C”** (the **“Employment Report”**). Company may redact employee identification numbers and in no event will Company be required to provide social security numbers or other nonpublic personal information about the employees. If the Employment Commitment was not met, Company must include an explanation as to why Company believes the Employment Commitment was not met and the efforts that were utilized to meet the Employment Commitment. Provision of the employment report under the 380 Program Agreement will also constitute provision of the Employment Report provided under this Agreement.

4.4.3 Subsequent Investment Report.

At any time prior to expiration of the Term, Company may (but is not required to) file one or more **“Subsequent Investment Reports”** with

the City substantially in the form attached hereto as **Exhibit “D”**. Each Subsequent Investment Report shall confirm that Company has made or caused to be made additional Investment on the Land in an aggregate amount of at least \$800,000,000.00 (the **“Subsequent Investment Threshold”**), which may be comprised of additional Investment that was not outlined in the Initial Completion Report or a prior Subsequent Investment Report. For the avoidance of doubt, in order to satisfy the reporting requirement for receipt of Abatement for a Subsequent Phase, Company is only required to submit sufficient information in the Subsequent Investment Report for such Phase to show that the Subsequent Investment Threshold was achieved (and shall not be required to submit additional documentation for any Investment that exceeds \$800,000,000.00). The Subsequent Investment Report may include solely new real property improvements, solely Personal Property or a combination of both real property improvements and Personal Property that constitutes a Subsequent Phase. For the avoidance of doubt, Company shall not be obligated to submit any Subsequent Investment Reports and failure to submit any such reports shall not be a default hereunder or a condition to receipt of any Abatement for the Initial Project Improvements. Provision of the Subsequent Investment Report under the 380 Program Agreement will also constitute provision of the Subsequent Investment Report provided under this Agreement. As noted in Section 4.2, the Subsequent Investment Report may serve as Company’s notice to the City to designate a Subsequent Phase.

Notwithstanding any statement to the contrary herein, as stated in Section 4.2, Company may (but shall not be required to) designate one or more Phases. Any improvements (including Project Improvements and Personal Property) in excess of the improvements included as part of the Subsequent Investment Threshold for the final Phase that Company designates will be considered a part of such final Phase and shall receive the Abatement for any remaining Abatement Period of the final Phase. The “final” Phase may be Phase 1 if Company only designates one Phase.

4.4.4 Annual Certification.

Pursuant to the Code, Company is required to certify annually to taxing units that it is in compliance with the terms of the Agreement. Company will complete and certify annually to the City, during each year in which Company receives Abatement hereunder for any Phase, a certificate of compliance substantially in the form attached hereto as **Exhibit “E”** (the **“Annual Compliance Certificate”**), to be due not later than April 30 of each year of an Abatement Period, as applicable.

4.5 El Paso Companies and El Paso Certified M/WBE Companies.

Company intends to use commercially reasonable efforts to expend or cause the expenditure of a portion of the Construction Costs with El Paso Companies and El Paso Certified M/WBE Companies in the construction of the Project Improvements, in Company's discretion. For the avoidance of doubt, Company's failure to expend or cause the expenditure of a portion of the Construction Costs with El Paso Companies and/or El Paso Certified M/WBE Companies shall not be considered a default hereunder and such expenditures shall be within Company's sole discretion.

4.6 *Intentionally Omitted.*

4.7 Inspections of Land and Project Improvements.

From and after the date that Company submits any Reports, at a time scheduled by Company during Company's normal business hours and following at least thirty (30) calendar days' prior written notice to Company, but no more than once per calendar year, the City will have the right, in the remaining months of the calendar year in which Company submits any Reports, for up to two City employees to inspect and evaluate the Land and the Project Improvements solely in order for the City to ensure that the Project Improvements are made according to the terms and conditions of this Agreement. Notwithstanding the foregoing, Company shall have the right to require that any representative of the City be escorted by a representative or security personnel of Company during any such inspection and evaluation, and that any such City representatives follow all security rules and requirements of Company during any inspection. Company shall be able to exercise its sole, reasonable discretion in scheduling a requested inspection so as not to interfere with its operations or activity on the Land. Company may require that any and all individuals inspecting the Land or the Project Improvements must first sign a confidentiality agreement under which they agree to not discuss or publicize any information they observe during an inspection. Further, Company may require that any information or documents that the City representatives view as part of an inspection are left at the Project Improvements.

4.8 Real Property Ownership; Use of Land.

During any Abatement Period, Company or an Affiliate (or a permitted assignee in accordance with Section 10 herein) shall own or lease the Land and Project Improvements (or portion thereof) subject to Abatement. After the Completion Deadline during the Term, when in use, the Project Improvements must be used for a lawful use related to the support and/or operation of Company's commercial, business, retail, or industrial uses. Notwithstanding the terms of this Agreement, Company will have no obligation to construct the Project Improvements (including without limitation any Phase thereof) and may

elect to construct or not to construct the Project Improvements in its sole and absolute discretion.

5. TAX ABATEMENT.

5.1 Initial Project Improvements.

Subject to the terms and conditions of this Agreement, provided that Company achieves the Investment Commitment by the Completion Deadline, subject to all extensions of time allowed by this Agreement, the City hereby grants and Company will be entitled to receive the Abatement for the Initial Project Improvements beginning in the First Year of Abatement and continuing thereafter for each year of the Abatement Period; provided that, Company shall not be entitled to receive the Abatement after the expiration of the Term. For the avoidance of doubt, the Abatement shall apply to all Project Improvements and Personal Property that are a part of or installed in a building that is a part of the Initial Project Improvements, regardless of whether such improvements and/or Personal Property were specifically included in the notice designating the Initial Project Improvements pursuant to Section 4.2 or the Initial Completion Report.

5.2 Subsequent Phases.

Subject to the terms and conditions of this Agreement, for each Subsequent Phase that meets the Subsequent Investment Threshold, the City hereby grants, and Company will be entitled to receive, the Abatement for each such Subsequent Phase, beginning with the First Year of Abatement for each Subsequent Phase, as applicable, and continuing thereafter for each year of the Abatement Period for such Subsequent Phase(s), respectively; provided that, Company shall not be entitled to receive the Abatement after the expiration of the Term. For the avoidance of doubt, the Abatement shall apply to all Project Improvements and Personal Property that are a part of or installed in a building that is a part of each Subsequent Phase, respectively, regardless of whether such improvements and/or Personal Property were specifically included in the notice designating such Subsequent Phase, as applicable, pursuant to Section 4.2 or the Subsequent Investment Report for such Phase.

5.3 Commencement of Abatement Period.

City and Company agree and acknowledge that the commencement of the Abatement Period for each Phase, as applicable, is deferred to a date that is subsequent to the Effective Date of this Agreement, as authorized by Section 312.007 of the Code, but that no Abatement Period for a single Phase will exceed ten (10) years for any Phase in compliance with Section 312.007 of the Code. The Abatement Period(s) for separate Phases may run concurrently or successively.

5.4 Remaining Taxes Not Abated.

During any Abatement Period, Company shall be subject to all taxation not abated, including but not limited to the remaining 20 percent of the City's ad valorem taxes on the Land, the Project Improvements, and the Personal Property.

6. DEFAULT, TERMINATION AND FAILURE BY COMPANY TO MEET VARIOUS DEADLINES AND COMMITMENTS.

6.1 Failure to Meet Investment Commitment.

If the Completion Date does not occur on or before the Completion Deadline, or if the Investment Commitment is not met by the Completion Deadline, the City shall have the right to terminate this Agreement by providing written notice to Company without further obligation to Company as its sole and exclusive remedy.

6.2 Failure to Timely Cause Commencement of Construction.

If Commencement of Construction does not occur within five (5) years of the Effective Date, the City shall notify Company in writing and Company shall have ninety (90) calendar days from receipt of the City's notice of such failure to cure such failure. If Company does not cure the failure within such ninety day period, then, as the City's sole and exclusive remedy under this Agreement, the City may (i) reduce the Abatement Period for Phase 1 for each year that the Commencement of Construction is delayed beyond the initial five (5) years. By way of example, if the Commencement of Construction occurs more than five (5) years after the Effective Date but on or prior to the sixth anniversary of the Effective Date, then the City may reduce the Abatement Period for Phase 1 from ten (10) years to nine (9) years. Failure to cause the timely Commencement of Construction shall only impact the Abatement Period for Phase 1. For the avoidance of doubt, the City may have other, separate remedies for failure to timely cause the Commencement of Construction under the Contract of Sale for the Land.

6.3 Failure to Meet Employment Commitment.

In any year after the Employment Commitment Date in which Company is eligible to receive the Abatement, if the employment level does not meet the Employment Commitment set forth in Section 4.3, the City shall notify Company in writing detailing the specific alleged failure and Company shall have one-hundred eighty (180) calendar days from receipt of the City's notice of such failure to cure such failure. If Company does not cure the failure within such one-hundred eighty day period, then the City may reduce the amount of any Abatement(s) Company is eligible to receive for that year as set forth herein, as its sole and exclusive remedy. Notwithstanding the foregoing, if Company meets the

Employment Commitment in the following years, Company shall be entitled to the full amount of the Abatement for such years.

6.3.1 After the Employment Commitment Date and subject to the notice and cure period set forth above, if the number of Full-Time Jobs falls below the Employment Commitment of fifty (50) Full-Time Jobs, but does not fall below forty-one (41) Full-Time Jobs (i.e., the number of Full-Time Jobs provided is between 41-49), any Abatement(s) for that year will be reduced by eight percent (8%) for each one Full-Time Job deficiency for that year. By way of example, a total of forty-five (45) Full-Time Jobs would be a deficiency of five (5) Full-Time Jobs, which would mean a forty percent (40%) reduction in the Abatement from eighty percent (80%) to forty percent (40%).

6.3.2 After the Employment Commitment Date and subject to the notice and cure period set forth above, if the number of Full-Time Jobs falls below forty-one (41) Full-Time Jobs (i.e., 40 or less), the Company will not be eligible for the Abatement in that year. Company will still be eligible in future years to receive the Abatement if Company meets the Employment Commitment in future years.

6.4 Failure to Pay City Taxes.

A default shall occur if any City taxes owed on the Land or on Personal Property owned by Company, become delinquent and Company does not pay such taxes, cause such taxes to be paid or properly follow the legal procedures for protest and/or contest of any such taxes within the cure period specified herein. If any City taxes owed on the Land or on the Personal Property owned by Company become delinquent, the City shall notify Company in writing and Company shall have sixty (60) calendar days to cure such default. If the default has not been cured by such time, the City shall have the right to terminate this Agreement (limited to and solely with respect to the applicable Phase that has delinquent City taxes) immediately by providing written notice to Company and shall have all other rights and remedies that may be available to it under the law or in equity necessary to collect such delinquent taxes, as the City's sole and exclusive remedies. Either payment of such taxes or initiation of and ongoing engagement in legal proceedings for protest and/or contest of such taxes shall constitute a full cure. Notwithstanding anything to the contrary herein, Company shall have the right, to the extent permitted by law, to protest, oppose and vote against any and all Taxes, and to contest the appraised value of the Land and any improvements or Personal Property located thereon.

6.5 Foreclosure.

Subject to any rights of a Mortgagee hereunder, upon the occurrence of any of the following events, the City will have the right to terminate this Agreement (with respect to the applicable Phase(s) for which the event occurs), as

its sole and exclusive remedy, immediately upon provision of written notice to Company of: (i) the completion of an action to foreclose or otherwise enforce a lien, Mortgage or deed of trust on the Land or improvements located on the Land; (ii) the involuntary conveyance to a third party of the Land or improvements located on the Land; or (iii) the appointment of a trustee or receiver for the Land or improvements located on the Land.

6.6 Failure to Submit Reports.

If Company fails to submit the Initial Completion Report in accordance with Section 4.4.1, the Employment Report in accordance with Section 4.4.2, and/or the Annual Compliance Certificate in accordance with Section 4.4.4, the City shall provide written notice to Company. If Company fails to provide any such report within thirty (30) calendar days following receipt of such written notice, the City will provide a second written notice to Company. If Company fails to provide the Initial Completion Report within thirty (30) calendar days following receipt of this second written notice, as its sole and exclusive remedy, the City may (but is not required to) delay the First Year of Abatement for Phase 1 until the calendar year following the year in which Company provides the City with the Initial Completion Report. If Company fails to provide the Employment Report and/or the Annual Compliance Certificate within thirty (30) calendar days following receipt of this second written notice, as its sole and exclusive remedy, the City may (but is not required to) delay the Abatement for the year in which the Employment Report and/or the Annual Compliance Certificate, as applicable, was due (for any applicable Phase(s) subject to Abatement) until Company provides the City with the Employment Report and/or Annual Compliance Certificate, as applicable. For the avoidance of doubt, failure to submit the Initial Completion Report, the Employment Report and/or the Annual Compliance Certificate shall not be a default hereunder, but the City may withhold the Abatement until the City receives such reports.

6.7 Knowing Employment of Undocumented Workers.

Company acknowledges that the City is required to comply with Chapter 2264 of the Texas Government Code, enacted by House Bill 1196 (80th Texas Legislature), which relates to restrictions on the use of certain public subsidies. Company hereby certifies that Company, and any branches, divisions, or departments of Company, does not and will not knowingly employ an undocumented worker, as that term is defined by Section 2264.001(4) of the Texas Government Code. In the event that Company, or any branch, division, or department of Company, is convicted of a violation under 8 U.S.C. Section 1324a(f) (relating to federal criminal penalties and injunctions for a pattern or practice of employing unauthorized aliens), subject to any appellate rights that may lawfully be available to and exercised by Company, Company shall repay, within one hundred twenty (120) calendar days following receipt of written demand from the City, the aggregate amount of the value of the Abatement received by

Company hereunder, if any, plus Simple Interest at a rate of four percent (4%) per annum.

For the purposes of this Section 6.7, “**Simple Interest**” is defined as a rate of interest applied only to an original value, in this case the aggregate value of Abatement received by Company pursuant to this Agreement. This rate of interest can be applied each year, but will only apply to the amount of the Abatement received hereunder and is not applied to interest calculated. For example, if the value of the Abatement received by Company hereunder is \$10,000 and it is required to be paid back with four percent (4%) interest five years later, the total amount would be $\$10,000 + [5 \times (\$10,000 \times 0.04)]$, which is \$12,000. This Section 6.7 does not apply to violations of any subsidiary or other Affiliate of Company, any franchisees of Company, or any person or entity with whom Company contracts.

6.8 General Breach.

Unless and to the extent stated elsewhere in this Agreement, a Party will be in default under this Agreement if such Party breaches any material term or condition of this Agreement and such breach remains uncured after sixty (60) calendar days following receipt of written notice from the other Party referencing this Agreement and identifying the default and curative action required to cure the same (or, if the Party in breach has diligently and continuously attempted to cure following receipt of such written notice but reasonably requires more than sixty (60) calendar days to cure, then such additional amount of time as is reasonably necessary to effect cure), the non-breaching Party, will have the right to terminate this Agreement (with respect to the applicable Phase(s) in which an uncured breach occurred) immediately by providing written notice to the other Party. Notwithstanding the foregoing, the aforementioned cure period shall not be applicable to any monetary obligations of a Party hereunder. For the avoidance of doubt, a Party shall not be considered in default unless and until such Party receives a notice of default and fails to cure such failure within the cure period stated herein. In the event of City’s default that is not cured within any applicable cure period, Company may terminate this Agreement, pursue an action for specific performance, or seek any other remedy allowable at law or in equity, except as limited by Section 6.11 herein.

6.9 City’s Sole Remedy in the Event of Breach.

Except as otherwise specifically provided herein, the City’s sole remedy in the event of Company’s uncured breach of any condition or obligation under this Agreement will be the City’s right to terminate this Agreement (with respect to the applicable Phase(s) in which an uncured breach occurred), after expiration of the applicable notice and cure period, upon written notice to Company of such termination and a detailed explanation citing the City’s right to such termination. In addition, except as required by Section 6.7 and Section 6.10 of this Agreement,

Company will not be required to repay any Abatement or property tax revenue lost as a result of this Agreement.

6.10 Repayment for Failure to Meet the Investment Commitment and Cause the Completion Date to Occur.

If the City elects to terminate this Agreement due to Company's failure to (i) achieve the Investment Commitment by the Completion Deadline, and/or (ii) cause the Completion Date to occur by the Completion Deadline, as authorized by Section 312.205(a)(4) of the Code, Company must pay the City any taxes that were abated in accordance with this Agreement and which otherwise would have been paid to the City in the absence of this Agreement. The City and Company agree that this amount is a reasonable approximation of actual damages that the City will incur as a result of an uncured failure by Company to achieve the Investment Commitment by the Completion Deadline and/or cause the Completion Date to occur by the Completion Deadline. This amount shall be due, owing and paid to the City within sixty (60) days following the effective date of termination of this Agreement by the City (if any). In the event that all or any portion of this amount is not paid to the City within sixty (60) days following the effective date of termination of this Agreement, Company shall also be liable for all penalties and interest on any outstanding amount at the statutory rate for delinquent taxes, as determined by the Code at the time of the payment of such penalties and interest.

6.11 Mutual Waiver of Consequential Damages.

Except in the case of gross negligence, bad faith or willful misconduct, for which claims for consequential damages are expressly reserved by the Parties, each Party hereby waives all claims against the other Party for any consequential or indirect damages that may arise out of or relate to this Agreement.

6.12 No Cross-Defaults.

Notwithstanding any statement to the contrary in this Agreement, all terms, conditions and obligations of this Agreement shall apply to each Phase independently. By way of example and for the avoidance of doubt, in the event of a default with respect to Phase 3 (if Company chooses, in its sole discretion, to develop Phase 3, or any Subsequent Phases), such default would have no impact on the Abatement, or Company's obligations with respect to the Initial Project Improvements, Phase 2, Phase 4 or any other Phase, as applicable (if such Phases exist), except Phase 3. Further, all terms, conditions and obligations of this Agreement shall apply independent of all terms, conditions, and obligations under the 380 Program Agreement. A default or termination under this Agreement does not constitute a default under the 380 Program Agreement, or vice versa.

7. INDEPENDENT CONTRACTOR.

It is expressly understood and agreed that Company shall operate as an independent contractor in each and every respect under this Agreement and not as an agent, representative or employee of the City. Company shall have the exclusive right to control all details and day-to-day operations relative to the Land and any improvements thereon and shall be solely responsible for the acts and omissions of its officers, agents, servants, employees, contractors, subcontractors, licensees and invitees. Company acknowledges that the doctrine of *respondeat superior* will not apply as between the City and Company, its officers, agents, servants, employees, contractors, subcontractors, licensees, and invitees. The Parties agree that nothing in this Agreement will be construed as the creation of a partnership or joint enterprise between the City and Company.

8. INDEMNIFICATION AND RELEASE.

COMPANY AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY, ITS OFFICERS, AGENTS SERVANTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, ACTIONS, COSTS AND EXPENSES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, THOSE FOR PROPERTY DAMAGE OR LOSS AND/OR PERSONAL INJURY, INCLUDING DEATH, THAT MAY ARISE OUT OF OR BE OCCASIONED BY (i) COMPANY'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT OR (ii) ANY NEGLIGENT ACT OR OMISSION OR INTENTIONAL MISCONDUCT OF COMPANY, ITS OFFICERS, AGENTS, ASSOCIATES, EMPLOYEES, CONTRACTORS OR SUBCONTRACTORS, RELATED TO THE LAND, IMPROVEMENTS ON THE LAND, INCLUDING THE PROJECT IMPROVEMENTS, AND ANY OPERATIONS AND ACTIVITIES THEREON, OR OTHERWISE TO THE PERFORMANCE OF THIS AGREEMENT. NOTWITHSTANDING THE FOREGOING, THE COMPANY SHALL NOT, HOWEVER, BE REQUIRED TO INDEMNIFY THE CITY AGAINST CLAIMS CAUSED BY THE CITY'S SOLE NEGLIGENCE OR WILLFUL MISCONDUCT, AND IF THE CITY INCURS CLAIMS THAT ARE CAUSED BY THE CONCURRENT FAULT OR NEGLIGENCE OF COMPANY AND THE CITY, THE COMPANY'S INDEMNITY OBLIGATION WILL BE LIMITED TO A FRACTION OF THE TOTAL CLAIMS EQUIVALENT TO THE COMPANY'S OWN PERCENTAGE OF RESPONSIBILITY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS.

TO THE EXTENT ALLOWABLE BY TEXAS LAW; THE CITY HEREBY RELEASES AND AGREES TO HOLD HARMLESS COMPANY, ITS OFFICERS, AGENTS, AFFILIATES AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS, LAWSUITS, ACTIONS, COSTS AND EXPENSES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO THOSE FOR PROPERTY DAMAGE OR LOSS AND/OR PERSONAL INJURY, INCLUDING DEATH, THAT MAY RELATE TO, ARISE OUT OF OR BE

OCCASIONED BY (i) THE CITY'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT OR (ii) ANY NEGLIGENT ACT OR OMISSION OR INTENTIONAL MISCONDUCT OF THE CITY, ITS OFFICERS, SERVANTS, AGENTS, ASSOCIATES, EMPLOYEES, CONTRACTORS OR SUBCONTRACTORS, RELATED TO THE LAND, IMPROVEMENTS ON THE LAND, INCLUDING THE PROJECT IMPROVEMENTS, AND ANY OPERATIONS AND ACTIVITIES THEREON, OR OTHERWISE TO THE PERFORMANCE OF THIS AGREEMENT. NOTWITHSTANDING THE FOREGOING, THE CITY SHALL NOT, HOWEVER, BE REQUIRED TO INDEMNIFY THE COMPANY AGAINST CLAIMS CAUSED BY THE COMPANY'S SOLE NEGLIGENCE OR WILLFUL MISCONDUCT, AND IF THE CITY INCURS CLAIMS THAT ARE CAUSED BY THE CONCURRENT FAULT OR NEGLIGENCE OF COMPANY AND THE CITY, THE CITY'S OBLIGATION WILL BE LIMITED TO A FRACTION OF THE TOTAL CLAIMS EQUIVALENT TO THE CITY'S OWN PERCENTAGE OF RESPONSIBILITY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS.

9. NOTICES.

Whenever any notice is required or permitted under this Agreement, it shall be in writing and shall be delivered (i) by electronic mail with a confirming copy being forwarded by a reliable overnight courier service within 24 hours thereafter to the recipient at the mailing address set forth below; (ii) personally, with acknowledgment of receipt being obtained by the delivering Party, (iii) by U.S. Certified Mail, return receipt requested; or (iv) by overnight delivery service by a reliable company, such as Federal Express or United Parcel Service, with acknowledgement of receipt being obtained by the delivering Party; provided that, any notice delivered to Company in the manner described in items (ii), (iii), or (iv) shall also be sent by electronic mail addressed as provided herein. Notice shall be deemed given when received. Until further notification by written notice in the manner required by this Section 9, notices to the Parties shall be delivered as follows:

City:

City of El Paso
Attn: City Manager
P.O. Box 1890
El Paso, Texas 79950-1890
EDCompliance@elpasotexas.gov

Company:

Worldwide LLC
c/o Winstead PC
Attn: Laura Hoffmann
2728 N. Harwood Street, Suite 500
Dallas, Texas 75201
lhoffmann@winstead.com

10. ASSIGNMENT AND SUCCESSORS.

10.1 Affiliates and Future Owners or Lessees.

Company may at any time assign, transfer or otherwise convey any of its rights or obligations under this Agreement, in whole or in part, to an Affiliate, future owner of all or a portion of the Land or lessee of all or a portion of the Land or Project Improvements without the consent of the City, but upon written notice to the City (and upon such assignment the assigning entity shall be relieved of its covenants, commitments and obligations hereunder to the extent of the rights and obligations so assigned).

10.2 Collateral Assignment.

Company may assign its rights and obligations under this Agreement, in whole or in part, to a financial institution or other lender for purposes of granting a Mortgage in the Land and/or improvements thereon without the consent of the City, but upon written notice to the City.

10.3 Sale/Leaseback.

So long as Company or an Affiliate to which this Agreement has been assigned remains a lessee, or its substantial equivalent, Company may transfer fee simple title to the Land to a third party and continue to exercise its rights and obligations under this Agreement, including but not limited to the Abatement, and may choose to retain its rights and obligations under this Agreement (in lieu of an assignment).

10.4 Other Assignment.

Except as otherwise provided by Sections 10.1, 10.2 and 10.3 herein, Company may not assign, transfer or otherwise convey any of its rights or obligations under this Agreement to any other person or entity without the consent of the City Council, which consent shall not be unreasonably withheld, conditioned or delayed, but conditioned on: (i) the prior approval of the assignee or successor and finding by the City Council that the proposed assignee or successor is financially capable of meeting the terms and conditions of this Agreement and (ii) prior execution by the proposed assignee or successor of a written agreement with the City under which the proposed assignee or successor agrees to assume and be bound by all covenants and obligations of Company under this Agreement. Any attempted assignment other than an assignment pursuant to Sections 10.1, 10.2 or 10.3 without the City Council's prior consent shall constitute grounds for termination of this Agreement following ten (10) calendar days after receipt of written notice from the City to Company (provided that the City shall only be entitled to send such termination notice after Company's failure to cure within the cure period set forth in Section 6.8 herein). Any permitted assignee or successor in

interest of Company of rights and/or obligations under this Agreement shall be deemed “Company” for all purposes under this Agreement.

11. ESTOPPEL CERTIFICATE.

Upon written request by Company to the City, the City will provide Company with a certificate stating, as of the date of the certificate, (i) whether this Agreement is in full force and effect and, if Company is in breach of this Agreement, the nature of the breach and the curative action required to cure the same; (ii) a statement as to whether this Agreement has been amended and, if so, the identity of each amendment; and (iii) any other factual matters reasonably requested that relate to this Agreement. The City Manager or its authorized designee may execute, after review as to form by the City Attorney’s Office, on behalf of the City, any estoppel certificate requested by the Company that is consistent with this Section 11. The City acknowledges that an estoppel certificate may be relied upon by transferees or successors in interest to the Company and by Mortgagees holding an interest in the Land.

12. COMPLIANCE WITH LAWS, ORDINANCES, RULES AND REGULATIONS.

This Agreement will be subject to all applicable federal, state and local laws, ordinances, rules and regulations.

13. LIMITED WAIVER OF IMMUNITY.

The Parties are entering into this Agreement in reliance upon its enforceability. Consequently, the City unconditionally and irrevocably waives all claims of sovereign and governmental immunity which it may have (including, but not limited to, immunity from suit and immunity to liability), if any, to the extent, but only to the extent, that a waiver is necessary to enforce specific performance of this Agreement (including all of the remedies provided under this Agreement) and to give full effect to the intent of the Parties under this Agreement. Notwithstanding the foregoing, the waiver contained herein shall not waive any immunities that the City may have with respect to claims of injury to persons or property, which claims shall be subject to all of their respective immunities and to the provisions of the Texas Tort Claims Act. Further, the waiver of immunity herein is not enforceable by any party not a Party to this Agreement.

14. ADDITIONAL PROVISIONS.

14.1 Future Land Uses and Zoning.

The City acknowledges that as of the Effective Date Company's proposed land use is consistent with and allowed pursuant to the C-4 (Commercial District) zoning classification of the Land. Moreover, the current Comprehensive Plan provides that uses consistent with this zoning classification are the most appropriate for the Land. In the event that the City receives any request for a residential zoning classification within 250 feet of the Land, the City will promptly provide Company with written notice of such request.

14.2 Compliance With and Changes in Applicable City Rules.

The City represents to the Company that no Applicable City Rule conflicts with the provisions of this Agreement. The City shall not add or modify any Applicable City Rule, including any zoning, land use or building regulation, with the express or inferred intent to specifically or inequitably target the Project, the Land, the Company or the data center industry or in a manner that adversely affects the Project, the Land or the data center industry.

14.3 Expedited Permitting.

During the Term, the City shall expedite the review and any response to the permits, approvals, maps, plans, inspections, applications and other requests in connection with the Land and Project Improvements (including staff review processing and actions by any boards and commissions). The City shall appoint an appropriate staff member with knowledge and experience in the relevant subject area dedicated to the prompt review of any and all plans and the prompt performance of any and all inspections required for the design, construction, development and occupancy of the Project Improvements (or portion thereof), and otherwise to organize and expedite such permit approval and review.

14.4 New Taxes.

City staff shall not during the Term recommend or support any new Taxes that are applicable solely to the Project, the Company, the Land, operators of computer equipment, or the data center industry or with the express or inferred intent to specifically or inequitably target the Project, the Company, the Land or the data center industry.

14.5 Calculation of Dates.

If the date for the performance of any covenant or obligation under this Agreement shall fall on a Saturday, Sunday or legal holiday in the State of Texas, then the date for performance thereof shall be extended to the next Business Day.

14.6 Ethical Business Practices; No Procurement Process.

In connection with the negotiation and performance of this Agreement, the City represents and warrants that it has complied and covenants that it shall comply with all Applicable City Rules and applicable laws, including without limitation anti-corruption legislation, and that it has used and shall use only legitimate and ethical business practices. The performance of any obligations under this Agreement does not require the Company to submit any bid or otherwise participate in any procurement process of the City or to undertake any other obligations required by procurement laws and regulations of the City or other applicable law.

15. NO WAIVER.

The failure of either Party to insist upon the performance of any term or provision of this Agreement or to exercise any right granted hereunder shall not constitute a waiver of that Party's right to insist upon appropriate performance or to assert any such right on any future occasion.

16. VENUE AND JURISDICTION; ATTORNEYS' FEES.

If any action, whether real or asserted, at law or in equity, arises on the basis of any provision of this Agreement, venue for such action shall lie in and be brought exclusively in either the federal courts of the Northern District of Texas, Dallas Division, or in the State District Courts of El Paso County, Texas. This Agreement shall be construed in accordance with the laws of the State of Texas. In the event any action is brought by either Party hereto against the other Party, relating to or arising out of this Agreement, the transaction described herein or the enforcement hereof, the prevailing Party shall be entitled to recover from the other Party the reasonable attorneys' fees, costs and expenses incurred in connection with the prosecution or defense of such action, including, without limitation, the costs and fees incurred in connection with the enforcement or collection of any judgment obtained in any such proceeding. The provisions of this Section 16 shall survive the termination of this Agreement and the entry of any judgment, but shall not merge, or be deemed to have merged, into any judgment.

17. MORTGAGES.

17.1 Mortgages.

This Agreement shall not prevent or limit the Company from encumbering the Land or any estate or interest therein, portion thereof, or any improvement thereon, in any manner whatsoever by one or more Mortgages with respect to the construction, development, use or operation of the Project or any portion thereof. The City acknowledges that Mortgagees may require certain interpretations and modifications of this Agreement. Upon the Company's request from time to time, the City shall meet with the Company and such Mortgagees to negotiate in good faith any such requests for interpretation or modification. The City shall not withhold its consent to any such requested interpretation or modification that is

consistent with the intent and purposes of this Agreement.

17.2 Mortgagee Not Obligated.

A Mortgagee shall not have any obligation or duty to perform pursuant to the terms set forth in this Agreement.

17.3 Mortgagee Notice and Cure Rights.

If requested in writing by a Mortgagee, the City shall deliver to such Mortgagee any notice of default delivered to the Company hereunder. Notwithstanding any statement to the contrary herein, a Mortgagee shall have the right, but not the obligation, to cure such default within one hundred twenty (120) days after such Mortgagee receives such notice, during which period the City shall not exercise any remedies hereunder.

17.4 Disaffirmation.

If this Agreement is terminated with respect to a portion of the Land by reason of any default by the Company or as a result of a bankruptcy proceeding of the Company, or if this Agreement is disaffirmed by a receiver, liquidator or trustee for the Company or its property, then the City, if requested by a Mortgagee, shall negotiate in good faith, with the most senior requesting Mortgagee, a new agreement for the Project as to such portion of the Land. This Agreement does not require any Mortgagee or the City to enter into a new agreement pursuant to this Section 17.4.

18. SEVERABILITY; CONFLICTING LAW.

If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired. If any law is enacted after the Effective Date that prohibits either Party from materially performing its duties and obligations under this Agreement or that affects the ability of Company to receive the Abatement hereunder, the Parties agree to meet and confer in good faith for a period of no less than thirty (30) and no more than ninety (90) days to seek to effectuate an amendment to this Agreement that preserves, to the extent reasonably possible, the original intentions of the Parties under this Agreement, with the understanding that this Agreement cannot be amended without the approval of the City Council.

19. CONFIDENTIAL INFORMATION.

Company may designate any trade secrets or confidential business information included in any report or other writing delivered to City pursuant to or in connection with this Agreement by any method intended to clearly set apart the specific material that Company claims to be either its trade secrets or confidential business information that, if released, would give an advantage to competitors or result in unfair competitive injury to Company (such information, whether specifically designated by Company or not, collectively, “**Confidential Business Information**”). Unless or until the Texas Attorney General renders a final decision indicating that all or part of the information must be disclosed (after City opposes the release as described below), City shall redact or delete any Confidential Business Information from any records it makes available for inspection or of which it provides copies. Within two (2) Business Days following City’s receipt of any request to inspect or obtain copies of public records relating to this Agreement or the Project, City shall provide written notice of the same to Company, which notice shall include a copy of such request. Such notice shall also include instructions and deadline(s) for Company to make its argument of confidentiality to the Texas Attorney General. City shall not allow inspection or provide copies of any such requested records until Company shall have had not less than 10 Business Days (following and excluding the day on which Company receives such notice) to determine whether to contest the right of any party to inspect or receive copies of such records. Additionally, upon such a request for public records and within the time periods required pursuant to the Texas Public Information Act (“**TPIA**”), City shall submit a brief to the Texas Attorney General’s Office opposing the release of any Confidential Business Information and identifying the basis for any claimed exceptions under the TPIA; provided, however, nothing herein shall prevent or limit Company’s right to claim any exemption from disclosure it believes applicable directly to the Texas Attorney General. City shall not allow inspection or provide copies of any Confidential Business Information unless and until the Texas Attorney General renders a final decision indicating that all or part of the information must be disclosed (after opposing the release of such information as described above and pursuant to the processes outlined in the TPIA). Any such action to enjoin the release of Confidential Business Information may be brought in the name of Company or City. The costs, damages, if any, and attorneys’ fees in any proceeding commenced by Company or at its request by City to prevent or enjoin the release of Confidential Business Information in any public records relating to this Agreement or the Project shall be borne by Company.

20. MUTUAL ASSISTANCE; DISPUTE RESOLUTION.

The Parties will do all things reasonably necessary or appropriate to carry out the objectives, terms and provisions of this Agreement and to aid and assist each other in carrying out such objectives, terms and provisions, including without limitation, the City facilitating approval of City permits, documents, and other instruments as may be reasonably necessary in carrying out such objectives. In case of any disputes arising under this Agreement, the City and Company agree to attempt to resolve such disputes through good faith negotiations between authorized representatives of both Parties. If necessary, both Parties agree to submit a dispute to a non-binding mediation. If a dispute cannot be resolved through non-binding mediation, either Party may pursue any available

legal remedies in any court of competent jurisdiction that satisfies the requirements of Section 16, or, if both Parties mutually agree, the dispute may be submitted to binding arbitration in accordance with procedures to which both Parties agree.

21. CITY PROCEDURES AND ACTIONS.

The City Council, after conducting a duly-noticed public meeting, adopted a resolution on December 5, 2023 effective immediately upon adoption, which resolution (i) confirmed the City Council's approval of this Agreement and the City Council's finding that the provisions of this Agreement are consistent with the Comprehensive Plan and the Applicable City Rules and (ii) authorized the execution of this Agreement. The City represents and warrants to the Company that (a) the City has the full power and authority to enter into this Agreement and to perform its obligations hereunder, (b) this Agreement is a valid and binding obligation, enforceable against the City in accordance with the terms hereof and (c) the execution and delivery of this Agreement has been validly authorized by all necessary governmental or other action and does not conflict with any other agreements entered into by the City.

22. NO THIRD PARTY RIGHTS.

The provisions and conditions of this Agreement are solely for the benefit of the Parties, including any successor or permitted assign of Company, and are not intended to create any rights, contractual or otherwise, to any other person or entity.

23. FORCE MAJEURE.

It is expressly understood and agreed by the Parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of Force Majeure, the Party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such design or construction requirement and the completion deadline shall be extended for a period of time equal to the period such Party was delayed; provided, however, in all cases, only to the extent that the Party claiming Force Majeure (1) did not cause such Force Majeure condition, and (2) throughout the pendency of such Force Majeure condition, utilizes commercially reasonable efforts to minimize the impact and delays caused by such Force Majeure condition.

24. INTERPRETATION.

In the event of any dispute over the meaning or application of any provision of this Agreement, this Agreement shall be interpreted fairly and reasonably, and neither more strongly for or against any Party, regardless of the actual drafter of this Agreement. Each Party was represented by legal counsel in the negotiation of this Agreement.

25. CAPTIONS.

Captions and headings used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

26. ENTIRETY OF AGREEMENT.

This Agreement, including any exhibits attached hereto and any documents incorporated herein by reference, contains the entire understanding and agreement between the Parties as to the matters contained herein. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with any provision of this Agreement, and superseded by this Agreement. Notwithstanding anything to the contrary herein, this Agreement shall not be amended unless executed in writing by both Parties and approved by the City Council.

27. WAIVER OF JURY TRIAL.

EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (I) ARISING UNDER THIS AGREEMENT OR (II) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THIS AGREEMENT OR ANY OF THE TRANSACTIONS RELATED HERETO. EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY A COURT TRIAL WITHOUT A JURY AND THAT EITHER PARTY MAY FILE A COPY OF THIS AGREEMENT WITH ANY COURT AS EVIDENCE OF SUCH WAIVER.

28. COUNTERPARTS.

This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument. A scanned or photocopy signature on this Agreement, any amendment hereto or any notice delivered hereunder shall have the same legal effect as an original signature.

29. CONFLICTS OF INTEREST.

Neither the Land nor any improvements thereon are owned or leased by any member of the City Council, any member of the City Planning and Zoning Commission or any member of the governing body of any taxing unit with jurisdiction in the Zone.

30. EFFECT ON OTHER VESTED RIGHTS.

This Agreement does not abrogate any rights established or preserved by any applicable law, or by the Water and Wastewater Agreement or by any other agreement or contract executed by the City and the Company or an Affiliate in connection with the Project, or that have vested or may vest pursuant to common law or otherwise.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE(S)]

EXECUTED as of the last date indicated below:

CITY OF EL PASO, TEXAS

By: 
Name: Robert Cortines
Title: CFO

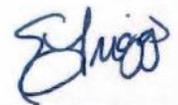
Date: 12/7/2023

APPROVED AS TO FORM:


Juan S. Gonzalez
Senior Assistant City Attorney

Date: November 30, 2023

APPROVED AS TO CONTENT:


Elizabeth Triggs
Director of Economic and
International Development

Date: 11/30/2023

WORLDWIDE LLC,
a Delaware limited liability company,
d/b/a Statue LLC

By: _____
Name: _____
Title: _____
Date: _____

EXECUTED as of the last date indicated below:

CITY OF EL PASO, TEXAS

By: _____

Name: _____

Title: _____

Date: _____

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Juan S. Gonzalez

Sr. Assistant City Attorney

Date: _____

Elizabeth Triggs

Director of Economic and
International Development

Date: _____

WORLDWIDE LLC,
a Delaware limited liability company,
d/b/a Statue LLC

By: Pamela A. Gregorski

Name: Pamela A. Gregorski

Title: CEO, President, Treasurer & Secretary

Date: December 5, 2023

EXHIBITS

“A” – Description of the Land

“B” – Form of Initial Completion Report

“C” – Form of Employment Report

“D” – Form of Subsequent Investment Report

“E” – Form of Annual Compliance Certificate

EXHIBIT "A"

Description of the Land

Being a tract of land situated in Section 3, Block 80, Township 1, Texas and Pacific Railroad Survey, Abstract No. 2381 and Section 4, Block 80, Township 1, Texas and Pacific Railroad Survey, Abstract No. 9862, City of El Paso, El Paso County, Texas further being portions of tracts of land described in deeds to City of El Paso recorded in Volume 1176, Page 504, and Volume 1186, Page 178, Deed Records, El Paso County, Texas and being more particularly described by metes and bounds as follows:

COMMENCING at a 2 inch pipe found in concrete marking the common corner of Section 3, 4, 9, and 10, Block 80, Township 1, Thence, North 02 degrees 06 minutes 58 seconds East, along the common line of said Sections 3 and 4, a distance of 220.30 feet to a 1/2 inch capped iron rod found (unreadable) for corner on the North right-of-way line of Stan Roberts Sr. Avenue (Farm to Market Road 2529) (variable width right-of-way), said corner being THE POINT OF BEGINNING;

Thence North 86 degrees 45 minutes 26 seconds West, along the South line of the herein described tract and said North right-of-way line of Stan Roberts Sr. Avenue (Farm to Market Road 2529), a distance of 5,279.75 feet to a 1/2 inch iron rod found for the Southwest corner of the herein described tract, called to be on the West line of said Section 4 and the East line of Section 5, Block 80, Township 1;

Thence North 02 degrees 06 minutes 25 seconds East, along the West line of the herein described tract and the common line of said Section 4 and Section 5, a distance of 4,894.97 feet to a 5/8 inch iron rod found for the Northwest corner of the herein described tract and the Southwest corner of a called 36.3628 acre tract within said Section 4 described in a deed to El Paso Electric Co., recorded in Volume 1226, Page 0532, Deed Records, El Paso, Texas;

Thence South 87 degrees 08 minutes 05 seconds East, along the North line of the herein described tract and the South line of said 36.3628 acre tract a distance of 5,279.39 feet to a 5/8 inch iron rod found on the called common line of said Sections 3 and 4 and being the Southeast corner of said 36.3628 acre tract in said Section 4 and the Southwest corner of a 36.4457 acre tract within said Section 3 to said El Paso Electric Co. recorded in said Volume 1226, Page 0532;

Thence along the North line of the herein described tract and a South line of said 36.4457 acre tract the following (3) three courses and distances;

South 87 degrees 07 minutes 56 seconds East, a distance of 5,179.86 feet to a El Paso Electric marker in concrete found for corner;

South 51 degrees 37 minutes 43 seconds East, a distance of 124.06 feet to a 5/8 inch iron rod found for an ell corner of the herein described tract and Southeast corner of said El Paso Electric Co. tract;

North 02 degrees 08 minutes 29 seconds East, passing through at a distance of 72.13 feet a 3/4 inch iron pipe found for reference, passing through a 2 inch iron pipe found at a distance of 372.37 feet, a total distance of 373.43 feet to a point for corner on the called Texas and New Mexico State Line and the South right-of-way line of State Line Drive for the most Northerly Northwest corner of the herein described tract, and the Northeast corner of said 36.4457 acre tract;

Thence South 87 degrees 10 minutes 50 seconds East, along a North line of the herein described tract and in the called Texas and New Mexico State Line, along the South right-of-way line of said State Line Drive, a distance of 18.23 feet to a 1/2 inch iron rod found for the Northeast corner of the herein described tract and being the Northwest corner of a tract of land described in a deed to El Paso Electric Company, recorded in Volume 1314, Page 1466, said Deed Records;

Thence South 02 degrees 19 minutes 11 seconds West, along the common line of called Section 2 and said Section 3, a distance of 2,736.66 feet to a 1/2 inch iron rod found for the most Easterly Southeast corner of the herein described tract and the Northeast corner of a tract of land described in a deed to Samuel A. Mendoza, recorded in Document Number 20180001261, Official Public Records, El Paso County Texas from which a 5/8 inch iron rod found bears South 03 degrees 34 minutes 10 seconds East, a distance of 5.70 feet;

Thence North 87 degrees 05 minutes 39 seconds West, along a South line of the herein described tract and the North line of said Mendoza Tract, a tract of land to the Mullen Family Limited Partnership, recorded in Document Number 20160048262, said Official Public Records, and Bernard A. Goldberg and E. Molly Goldberg Trustees, recorded in 20050055318, said Official Public Records, a distance of 2,644.56 feet to a 1/2 inch iron rod found for an ell corner of the herein described tract and the Northwest corner of said Goldberg Tract, from which a 1/2 inch iron rod found for reference bears North 22 degrees 48 minutes 51 seconds East, a distance of 10.30 feet;

Thence South 02 degrees 13 minutes 07 seconds West, along an East line of the herein described tract and the West line of the said Goldberg Tract and said Mullen Tract, a distance of 2,095.99 feet to a 1/2 inch iron rod found for the North most Southeast corner of the herein described tract and the Northeast corner of a called 1.054 acre tract described in a deed to El Paso Electric Co., recorded in Volume 1043, Page 100 of said Deed Records;

Thence North 86 degrees 43 minutes 50 seconds West, along a South line of the herein described tract, and the North Line of said El Paso Electric Co. tract, a distance of 417.18 feet to an iron rod with cap (unreadable) found for an ell corner of the herein described tract and the Northwest corner of said El Paso Electric Tract;

Thence South 02 degrees 09 minutes 10 seconds West, along an East line of the herein described tract, passing at a distance of 110.57 feet to a 2 inch Epeco Aluminum cap

found for the Northwest corner of a tract of land described in a deed to the El Paso Electric Co., recorded in Volume 1338, Page 506, said Deed Records, continuing along said course for a total distance of 417.68 feet to a 5/8 inch iron rod with cap stamped "Olsson" set in the North right-of-way line of said Stan Roberts Sr. Avenue for a South most Southeast corner of the herein described tract;

Thence North 86 degrees 45 minutes 16 seconds West, along the South line of the herein described tract and the North Right-of-way Line of said Stan Roberts Sr. Avenue, passing through at a distance of 675.59 feet, a 1/2 inch iron rod found, continuing along said course for a total distance of 2,222.58 feet to the POINT OF BEGINNING, containing 45,256,585 Square Feet or 1,038.948 Acres of Land.

EXHIBIT "B"

Form of Initial Completion Report

**CITY OF EL PASO – TAX ABATEMENT AGREEMENT
INITIAL COMPLETION REPORT**

Date:
Company:
Effective Date of Agreement:

Calendar Year	Reported Investment in Construction Costs for Initial Project Improvements	Reported Investment in Personal Property for Initial Project Improvements	Total Reported Annual Investment for Initial Project Improvements
TOTAL	\$	\$	\$

Notes:

- (1) Initial Completion Report to be accompanied by invoices and proof of payment for dollars reported necessary to properly document the above referenced totals.

EXHIBIT "C"

Form of Employment Report

(see attached)

CITY OF EL PASO – TAX ABATEMENT AGREEMENT

Employment Report

Date:
Company:
Effective Date of Agreement:

Number	Employer	Redacted Employee Number (last 3 digits)	Start Date	Full-Time (Yes/No)	Meets wage requirement (Yes/No)
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
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Legal Approved

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EXHIBIT "D"

Form of Subsequent Investment Report

**CITY OF EL PASO – TAX ABATEMENT AGREEMENT
SUBSEQUENT INVESTMENT REPORT**

Date:
Company:
Effective Date of Agreement:

Calendar Year	Reported Investment in Construction Costs for Applicable Phase	Reported Investment in Personal Property for Applicable Phase	Total Reported Annual Investment for Applicable Phase
TOTAL	\$	\$	\$

Notes:

- (1) Subsequent Investment Report to be accompanied by invoices and proof of payment for any dollars reported necessary to properly document the above referenced totals.

EXHIBIT "E"

Form of Certificate of Compliance

To be filed annually with the City on or before April 30th of each year of an Abatement Period.

CERTIFICATE OF COMPLIANCE

**WITH TAX ABATEMENT AGREEMENT
BETWEEN THE CITY OF EL PASO AND WURLDWIDE LLC
("Agreement")**

Capitalized terms herein have the same meaning as in the Agreement.

_____, a _____ (the
"Company") hereby certifies that:

Initials _____

- 1) the Project Improvements for Phase ___ have been completed and all improvements for such Phase have been constructed or installed pursuant to said Agreement,

- 2) all ad valorem taxes not abated by the Agreement have been timely paid by Company, and

3) all other terms and conditions of this Agreement have been complied with.

OR

The Company hereby certifies that:

Initials _____

The Company is not in compliance with the Agreement because Company does not meet the following requirements for the current year (list all that apply):

Executed on the _____ day of _____, _____

Printed Name: _____
Title: _____
Signature: _____