

STATE OF TEXAS §
 § ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT
COUNTY OF DALLAS §

This Economic Development Incentive Agreement (“Agreement”) is made by and between the City of Coppel, Texas (the “City”), and Varidesk, LLC, a Texas limited liability company (“Company”) (each a “Party” and collectively the “Parties”), acting by and through their respective authorized officers.

W I T N E S S E T H:

WHEREAS, Company has purchased or is under contract to purchase the real property located at the northeast corner of Freeport Parkway and State Highway 121, in Coppel, Texas, as further described in **Exhibit “A”** (the “Land”), and intends to construct an industrial/ warehouse building containing 140,000-180,000 square feet of space on the Land, and other ancillary facilities such as reasonably required parking and landscaping more fully described in the submittals filed by Owner with the City, from time to time, in order to obtain a building permit(s) (hereinafter defined as the “Improvements”); and

WHEREAS, Company has advised City that a contributing factor that would induce the Company to construct the Improvements would be an agreement by City to provide an economic development grant to Company; and

WHEREAS, promoting the expansion and maintenance of existing business enterprises within the City will promote economic development, stimulate commercial activity, generate additional sales tax and will enhance the property tax base and economic vitality of the City; and

WHEREAS, the City is authorized by Article III, Section 52-a of the Texas Constitution and Texas Local Government Code Chapter 380 to provide economic development grants to promote local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, the City has adopted programs for promoting economic development (the “Economic Development Program”); and

WHEREAS, the City has determined that providing the Grants to the Company in accordance with this Agreement is in accordance with the City Economic Development Program and will: (i) further the objectives of the City; (2) benefit the City and the City’s inhabitants; and (iii) promote local economic development and stimulate business and commercial activity in the City.

NOW THEREFORE, in consideration of the foregoing, and on the terms and conditions hereinafter set forth, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

Article I

Term

This Agreement shall be effective on the Effective Date and shall continue until the Expiration Date, unless sooner terminated as provided herein.

Article II

Definitions

Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

“Annual Grants” shall mean annual economic development grants to be provided by City, each in an amount equal to the percentage of the City ad valorem taxes assessed against the Property and collected by City according to the schedule set forth in Section 3.2 for the applicable Tax Year, in excess of the ad valorem taxes assessed by City against the Property and collected by City for the Base Year, to be paid as set forth herein.

“Bankruptcy or Insolvency” shall mean the dissolution or termination of a Party’s existence as a going business, insolvency, appointment of receiver for any part of such Party’s property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against such Party and such proceeding is not dismissed within ninety (90) days after the filing thereof.

“Base Year” shall mean Tax Year 2020.

“City” shall mean City of Coppell, Texas.

“Commencement Date” shall mean the date the City has issued a certificate of occupancy for Company to occupy the Improvements.

“Commencement of Construction” shall mean that: (i) the plans have been prepared and all approvals thereof and permits with respect thereto required by applicable governmental authorities have been obtained for construction of the Improvements; (ii) all necessary permits for the construction of the Improvements to the respective plans therefore having been issued by all applicable governmental authorities; and (iii) grading of the Land and vertical elements of the Improvements, have commenced.

“Company” shall mean Varidesk, LLC, a Texas limited liability company.

“Company Affiliate” shall mean any entity that is directly or indirectly controlled by or is under common control with Company.

“Completion of Construction” shall mean: (i) substantial completion of the Improvements; and (ii) the date City has issued a certificate of occupancy for Company to occupy the Improvements.

“Consummated” shall have the same meaning assigned by Texas Tax Code, Section 321.203, or its successor.

“Effective Date” shall mean the last date of execution hereof.

“Employment Grants” shall mean economic development grants each in the amount of One Thousand Dollars (\$1,000.00) for each new Employment Position created during any Employment Period during the term of this Agreement, not to exceed the Maximum Employment Grant Amount, to be paid as set forth herein. It being the intention of the Parties that Company shall be entitled to an Employment Grant for each net Employment Position created in an Employment Period and maintained during the term of this Agreement, not to exceed the Maximum Employment Grant Amount.

“Employment Period” shall mean consecutive twelve (12) month periods during the term of this Agreement, with the first such period beginning on the Effective Date and ending on the day prior to the first anniversary of the Commencement Date, and each subsequent Employment Period beginning on the first and each subsequent anniversary date of the Commencement Date and ending on the day prior to the next subsequent anniversary of the Commencement Date.

“Employment Positions” shall mean Company FTE Positions that have been created, maintained and filled at the Improvements per Employment Period during the period beginning with the Effective Date and ending on the seventh (7th) anniversary date of the Commencement Date, which positions have an annual salary, inclusive of payments for compensation as salary, wages, commissions, and/or bonuses, but exclusive of benefits, of at least Eighty Thousand Dollars (\$80,000.00).

“Expiration Date” shall mean the date the last of the Grants have been paid by City to Company.

“Force Majeure” shall mean any contingency or cause beyond the reasonable control of a Party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of the Party), fires, explosions or floods, strikes, slowdowns, pandemics or work stoppages.

“Freeport Goods” shall have the same meaning as assigned by Section 11.251 of the Tax Code and Article VIII, Section 1-j of the Texas Constitution. Freeport Goods does not include “Goods in Transit” as defined by Tax Code, Section 11.253.

“FTE Position” or “FTE” means a position filled by an individual scheduled to work at the Improvements for a combined total of at least 2080 hours, including any paid time off, during an Employment Period. The number of FTE’s for an Employment Period shall be based on a weekly

average count of FTE's working at the Improvements during each calendar week during the Employment Period.

"Goods in Transit" shall have the same meaning assigned by Tax Code, Section 11.253.

"Grant Year" shall mean Tax Year, except the First Grant Year shall mean the eleventh (11th) Tax Year following the Commencement Date.

"Grants" shall collectively mean the Annual Grants, the Employment Grants, the Permit Fee Waiver, and the Sales Tax Grants.

"Impositions" shall mean all taxes, assessments, use and occupancy taxes, charges, excises, license and permit fees, and other charges by public or governmental authority, general and special, ordinary and extraordinary, foreseen and unforeseen, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on Company or any property or any business owned by Company within City.

"Improvements" shall mean an industrial/ warehouse building containing 140,000-180,000 square feet of space upon Completion of Construction thereof on the Land, and other ancillary facilities such as reasonably required parking and landscaping more fully described in the submittals filed by Owner with the City, from time to time, in order to obtain a building permit(s), provided, however, that "Improvements" shall not include the Land.

"Land" means the real property described in **Exhibit "A"**.

"Maximum Employment Grant Amount" shall mean the aggregate payment of Employment Grants for three hundred fifty (350) Employment Positions or Three Hundred Fifty Thousand Dollars (\$350,000.00).

"Payment Request" shall mean: (i) with respect to a Sales Tax Grant, a written request from Company to the City for payment of a Sales Tax Grant accompanied by the Sales Tax Certificate for the applicable Sales Tax Reporting Period; (ii) with respect to an Annual Grant, a written request from Company to the City for payment of the applicable Annual Grant, which request shall be accompanied by copies of tax statement and/or receipt(s) and/or other evidence reasonably satisfactory to the City to establish that the ad valorem taxes assessed by the City against the Property has been timely paid for such Grant Year; and (iii) with respect to an Employment Grant, a written request from Company to City for payment of an Employment Grant accompanied by employment records or other evidence reasonably satisfactory to the City to establish the Employment Positions created and maintained during the applicable Employment Period.

"Permit Fee Waiver" shall mean a waiver of fifty percent (50%) of the building permit fees related to the construction of the Improvements.

"Property" shall collectively mean the Improvements and the Tangible Personal Property.

“Real Property” shall collectively mean the Land and Improvements.

“Related Agreement” shall mean: (i) any agreement (other than this Agreement) by and between City and Company and/or Company Affiliate; and (ii) the Tax Abatement Agreement.

“Required Use” shall mean the manufacture, sale and distribution of Company products consisting of Flexible furniture solutions to create workspaces that elevate people.

“Sales and Use Tax” shall mean the City's one percent (1%) sales and use tax imposed pursuant to Chapter 321 of the Texas Tax Code on the sale of Taxable Items by Company Consummated at the Improvements.

“Sales Tax Certificate” shall mean a report provided by the State of Texas to the City in accordance with Texas Tax Code, Section 321.3022, (or other applicable provision of the Texas Tax Code) which lists the amount of Sales and Use Tax paid (including any refunds, credits or adjustments) received by the City from the State of Texas from the sale of Taxable Items by the Company Consummated at the Improvements for the applicable Sales Tax Reporting Period and the amount of Sales and Use Tax paid (including any refunds, credits or adjustments) received by the City from the State of Texas from the purchase of materials for the construction of the Improvements consummated at the Improvements during the period beginning on the Effective Date and ending on the Commencement Date, or if such report is not available, a certificate or other statement in the form reasonably approved by the City, setting forth the collection of Sales and Use Tax (including any refunds, credits or adjustments) by Company received by the City from the State of Texas, for the sale of Taxable Items by the Company Consummated at the Improvements for the applicable Sales Tax Reporting Period and the amount of Sales and Use Tax paid (including any refunds, credits or adjustments) received by the City from the State of Texas from the purchase of materials for the construction of the Improvements consummated at the Improvements during the period beginning on the Effective Date and ending on the Commencement Date, and the total sales of Taxable Items by Company consummated at the Improvements for the applicable Sales Tax Reporting Period, which are to be used to determine eligibility of the Company for the Sales Tax Grants, together with such supporting documentation required herein, and as the City may reasonably request. The Sales Tax Certificate shall at a minimum contain, include or be accompanied by the following:

- (a) A schedule detailing the amount of the Sales and Use Tax collected and paid to the State of Texas as a result of the sale or purchase of Taxable Items by Company Consummated at the Improvements for the then ending Sales Tax Reporting Period;
- (b) A copy of all sales and use tax returns and reports, sales and use tax prepayment returns, direct payment permits and reports, including amended sales and use tax returns or reports, filed by Company for the then ending Sales Tax Reporting Period showing the Sales and Use Tax collected (including sales and use tax paid directly to the State of Texas pursuant to a direct payment certificate) by Company for the sale of Taxable Items by Company Consummated at the Improvements and showing the amount of Sales and Use Tax paid (including any refunds, credits or adjustments) received by the City from the State of Texas from the purchase of

materials for the construction of the Improvements consummated at the Improvements during the period beginning on the Effective Date and ending on the Commencement Date, including any supporting work papers;

- (c) A copy of all direct payment and self-assessment returns, including amended returns, filed by Company for the previous ending Sales Tax Reporting Period showing the Sales and Use Tax paid for the sale of Taxable Items by Company Consummated at the Improvements and the Sales and Use Tax paid (including any refunds, credits or adjustments) received by the City from the State of Texas from the purchase of materials for the construction of the Improvements consummated at the Improvements during the period beginning on the Effective Date and ending on the Commencement Date;
- (d) Information concerning any refund or credit received by Company of the Sales or Use Taxes paid or collected by Company which has previously been reported by Company as Sales and Use Tax paid or collected; and information concerning any Sales and Use Tax adjustments made pursuant to any sales and use tax audits by the State of Texas of either Company and its customers involving amounts reported by Company as subject to this Agreement;
- (e) A schedule detailing the total sales of Taxable Items by Company Consummated at the Improvements for the then ending Sales Tax Reporting Period and the total amount of the purchases of materials for the construction of the Improvements consummated at the Improvements during the period beginning on the Effective Date and ending on the Commencement Date.

“Sales Tax Grants” shall mean: (A) ten (10) annual economic development grants to be paid by City to Company each in the amount equal to seventy-five percent (75%) of the Sales Tax Receipts for the applicable Sales Tax Reporting Period; and (B) economic development grants to be paid by City to Company each in the amount equal to seventy-five percent (75%) of the Sales Tax Receipts for the purchase of materials for the construction of the Improvements consummated at the Improvements during the period beginning on the Effective Date and ending on the Commencement Date, to be paid to Company as set forth herein. The amount of each Sales Tax Grant shall be computed by multiplying the Sales Tax Receipts received by the City for a given Sales Tax Reporting Period by seventy-five percent (75%) less any administrative fee charged to City by the State of Texas for collection of the Sales and Use Taxes pursuant to Tax Code Section 321.503 or other applicable law.

“Sales Tax Receipts” shall mean City’s receipts of Sales and Use Tax from the State of Texas from Company’s collection of Sales and Use Tax (it being expressly understood that City’s one percent (1%) sales and use tax receipts are being used only as a measurement for its use of general funds to make a grant for economic development purposes) as a result of sale and purchase of Taxable Items by Company for the applicable Sales Tax Reporting Period Consummated at the Improvements.

“Sales Tax Reporting Period” shall mean (except for the Sales Tax Grants for Sales Tax Receipts from the purchase of materials for the construction of the Improvements consummated at the Improvements during the period beginning on the Effective Date and ending on the Commencement Date) each twelve (12) month period during the term of this Agreement provided however the first Sales Tax Reporting Period shall begin with January 1 of the calendar immediately following the Commencement Date. The first Sales Tax Reporting period shall include the Sales Tax Receipts from the purchase of materials for the construction of the Improvements consummated at the Improvements during the period beginning on the Effective Date and ending on the Commencement Date

“State of Texas” shall mean the office of the Texas Comptroller, or its successor.

“Tangible Personal Property” shall have the same meaning assigned by Tax Code, Section 1.04, and shall mean all tangible personal property, equipment, fixtures, and machinery, inventory and supplies owned or leased by Company and located in the Improvements on January 1 of a given Tax Year. Tangible Personal Property shall not include Freeport Goods or Goods in Transit.

“Tax Abatement Agreement” shall mean that certain tax abatement agreement by and between Company dated of approximate date herewith.

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

“Taxable Items” shall mean both “taxable items” and “taxable services” as those terms are defined by Chapter 151, Texas Tax Code, as amended.

“Taxable Value” means the appraised value as certified by the Appraisal District as of January 1 of a given year.

Article III

Economic Development Grant

3.1 Employment Grant.

(a) Subject to the continued satisfaction of the terms and conditions of this Agreement by Company, and the obligation of Company to repay the Grants pursuant to Article V hereof, City agrees to provide the Company with the Employment Grants during the period beginning with the Effective Date and ending the seventh (7th) anniversary date of the Commencement Date, not to exceed the Maximum Employment Grant Amount, as set forth herein. Beginning on the first anniversary date of the Commencement Date and each anniversary date of the Commencement Date thereafter, Company shall provide City with employment records and/or other evidence reasonably satisfactory to City to establish the Employment Positions created and maintained during the then ending Employment Period.

(b) Each Employment Grant shall be paid within thirty (30) days after City receipt of a Payment Request and City verification of the Employment Positions for the related Employment

Period following each anniversary date of the Commencement Date. For illustration purposes only assume that as of the first anniversary date of the Commencement Date that City has verified that Company had filled and maintained one hundred (100) Employment Positions for the Employment Period (beginning on the Commencement Date and ending 12 months later) then City would pay Employment Grants totaling \$100,000.00 (\$1,000.00 x 100 Employment Positions). For further illustration assume that, as of the second anniversary of the Commencement Date, City verified that Company had for the Employment Period (beginning on the first anniversary of the Commencement Date and ending 12 months later) filled and maintained one hundred (100) additional net Employment Positions in excess of the Employment Positions for the first Employment Period then City would pay Employment Grants totaling \$100,000.00 (\$1,000.00 x 100 Employment Positions). For further illustration assume that, as of the third anniversary of the Commencement Date, City verified that Company had for the Employment Period (beginning on the second anniversary of the Commencement Date and ending 12 months later) filled and maintained two hundred (200) additional net Employment Positions in excess of the Employment Positions for the first and second Employment Periods then the City would pay Employment Grants totaling \$150,000.00 (\$1000.00 x 150 Employment Positions)(total of 400 Employment Positions less the maximum of 350 Employment Positions).

(c) Company shall submit the Payment Request no earlier than thirty (30) days after each anniversary date of the Commencement Date during the period beginning with the Commencement Date and ending on the seventh (7th) anniversary date of the Commencement Date, and not later than sixty (60) days after the Commencement Date or anniversary date thereof, as the case may be. The failure to timely submit a Payment Request shall forfeit the entitlement of Company to the Employment Grant for the applicable Employment Period.

(d) Any Employment Position for which an Employment Grant has been paid by City to Company shall be maintained during the term of this Agreement. The failure to maintain an Employment Position, for which an Employment Grant has been paid, during the term of this Agreement shall not be considered an event of default subject to termination and repayment of the Grants pursuant to Article V, provided Company repays to City the Employment Grant paid by City to Company for each such Employment Position within thirty (30) days after written demand by City. The failure to timely repay such Employment Grant(s) shall be considered an event of default subject to termination pursuant and repayment of the Grants pursuant to Article V. In the event of voluntary or involuntary termination of an employee, which termination causes the elimination of an Employment Position, the Company shall not be in default and shall not be required to repay the Grant for such Employment Position provided such Employment Position is re-established within ninety (90) days of such employee termination.

(e) In no case shall the total amount of Employment Grants to be paid by City to Company pursuant to this Agreement exceed Three Hundred Fifty Thousand Dollars (\$350,000.00) or exceed three hundred fifty (350) Employment Positions. If Company has been paid an Employment Grant for an Employment Position that is later repaid pursuant to Section 3.1 (d) above such Employment Position is no longer eligible for an Employment Grant.

3.2. Annual Grants.

(a) Subject to the continued satisfaction of all of the terms and conditions of this Agreement by Company, and the obligation of Company to repay the Grants pursuant to Article V hereof, the City agrees to provide Company with Annual Grants each in an amount equal to the percentage of the City ad valorem taxes assessed against the Property and collected by the City according to the schedule set forth below for the applicable Grant Years in excess of the ad valorem taxes assessed by City against the Property and collected by City for the Base Year.

<u>Grant Years</u> (Tax Year following Commencement Date)	<u>Percentage</u>
11-20	90%
21-27	80%

Company shall submit a Payment Request for the respective Annual Grant on or before March 1 of the applicable calendar year but no later than 180-days thereafter, beginning March 1 of the calendar year following the First Grant Year. Such Annual Grants shall be paid by the City to Company within thirty (30) days after the City's receipt of the applicable Payment Request following March 1 of each calendar year (or the immediately following business day if March 1 is not a business day), beginning with March 1 of the calendar year following the First Grant Year, provided the City has timely received the City ad valorem taxes assessed against the Property in full for the respective Grant Year (i.e., the Tax Year immediately preceding the year in which an Annual Grant is to be made) (with it understood that the immediately preceding Tax Year is used to determine the amount of the Annual Grant) prior to the delinquency date. If Company fails to timely submit a Payment Request for an Annual Grant such failure shall not constitute a breach or default of this Agreement subject to termination and repayment of the Grants as provided in Article V hereof but shall operate as a forfeiture of such Annual Grant for such Grant Year. If such a forfeiture occurs for any Grant Year, the Company will still be eligible to receive the Annual Grants for the remaining Grant Years provided the Company is not otherwise in breach or default of this Agreement or a Related Agreement.

(b) Tax Protest. In the event Company or another party timely and properly protests or contests (including any motion to correct the appraisal roll) the Taxable Value and/or the taxation of the Property (the "Protest Property") with the applicable appraisal district (or its successor)(the "Tax Protest"), the obligation of the City to provide the Annual Grant with respect to the Protest Property or portion thereof, for such Tax Year shall be abated with regard to the amount of ad valorem taxes that are in dispute (based on the amount or portion of Taxable Value of the Protest Property in dispute) until a final determination has been made of such Tax Protest. In the event of a Tax Protest, the City shall send written notice to Company of the amount of ad valorem taxes that are in dispute (based on the amount or portion of Taxable Value of the Protest Property in dispute or the entire amount if the contested amount is unknown to the City). However, in the event a Tax Protest results in a final determination that changes the appraised value and/or the Taxable Value of the Protest Property, or the amount of ad valorem taxes assessed and due for the Protest Property, or portion thereof, after an Annual Grant has been paid, which includes the Annual Grant for such Protest Property for such Tax Year, the Annual Grant applicable to such

Protest Property will be adjusted accordingly and the Annual Grant with respect to such Tax Year shall be recomputed (increased or decreased, as the case may be) and the amount of any overpayment or underpayment shall reduce or increase the amount of the following Tax Year's Annual Grant. In the event there are no further Annual Grants due under this Agreement and the Taxable Value with respect to such Protest Property is reduced the Company shall, within thirty (30) days after written demand from the City, reimburse the City for such over payment of any such Annual Grants.

(c) Refunds and Underpayments of Grants. In the event the City reasonably determines that the amount of any Annual Grant paid by the City to Company was greater than the correct amount to which Company was entitled, Company shall, within sixty (60) calendar days after receipt of written notification thereof from the City specifying the amount by which such Annual Grant exceeded the correct amount to which Company was entitled (together with such records, reports and other information necessary to support such determination), pay such amount to the City. If the City or Company reasonably determine that the amount by which such Annual Grant was less than the correct amount to which Company was entitled (together with such records, reports and other information necessary to support such determination), the City shall, within sixty (60) calendar days after such determination, pay the adjustment to Company. The Parties shall mutually determine an underpayment or overpayment of an Annual Grant based on records and reports of the City ad valorem taxes assessed against the Property and collected by the City for the applicable Tax Year.

3.3 Permit Fee Waiver. The City agrees to provide Company the Permit Fee Waiver as the Improvements are constructed.

3.4 Sales Tax Grants.

(a) Sales Tax Grant. Subject to the continued satisfaction of all the terms and conditions of this Agreement by Company, and the obligation of Company to repay the Grants in accordance with Article V hereof, City agrees to provide Company with ten (10) annual Sales Tax Grants. The Sales Tax Grants shall be paid within ninety (90) days after receipt of a Payment Request following the end of the applicable Sales Tax Reporting Period beginning with the first Sales Tax Reporting Period. Each Payment Request shall be submitted to City not later than sixty (60) days after the end of each Sales Tax Reporting Period. Failure to timely submit a Payment Request for a Sales Tax Reporting Period shall operate as a forfeiture of the Sales Tax Grant for such Sales Tax Reporting Period and such failure shall not be considered as an event of default subject to termination and repayment as provided in Article V hereof. If such a forfeiture occurs for any Sales Tax Grant, the Company will still be eligible to receive the Sales Tax Grants for the remaining Grant Years provided the Company is not otherwise in breach or default of this Agreement or a Related Agreement.

(b) Adjustment Notification. Company shall promptly notify City in writing of any adjustments found, determined or made by Company, the State of Texas, or by an audit that results, or will result, in either a refund or reallocation of Sales Tax Receipts or the payment of Sales and Use Tax or involving amounts reported by Company as subject to this Agreement. Such notification shall also include the amount of any such adjustment in Sales and Use Tax or Sales

Tax Receipts. Company shall notify City in writing within thirty (30) days after receipt of notice of the intent of the State of Texas, to audit Company or to re-allocate Sales and Use Tax. Such notification shall also include the period of such audit or investigation.

(c) Amended Returns. In the event Company files an amended sales and use tax return, or report with the State of Texas, or if additional Sales and Use Tax is due and owing by Company to the State of Texas, as determined or approved by the State of Texas, affecting Sales Tax Receipts for a previous Sales Tax Reporting Period, then the Sales Tax Grant payment for the Sales Tax Reporting Period immediately following such State of Texas approved amendment shall be adjusted accordingly (i.e., up or down, depending on the facts), provided City has received Sales Tax Receipts attributed to such adjustment. As a condition precedent to payment of such adjustment, Company shall provide City with a copy of any such amended sales and use tax report or return, and the approval thereof by the State of Texas. Copies of any amended sales and use tax return or report or notification from the State of Texas that additional Sales and Use Tax is due and owing by Company to the State of Texas, as determined by the State of Texas, affecting Sales Tax Receipts for a previous Sales Tax Reporting Period shall be provided to City with the Payment Request for the next Sales Tax Reporting Period.

(d) Refunds and Underpayments of Sales Tax Grants. In the event the State of Texas determines that City erroneously received Sales Tax Receipts, or that the amount of Sales and Use Tax paid to Company exceeds (or is less than) the correct amount of Sales and Use Tax for a previous Sales Tax Reporting Period, for which Company has received a Sales Tax Grant, Company shall, within sixty (60) days after receipt of notification thereof from City specifying the amount by which such Sales Tax Grant exceeded the amount to which Company was entitled pursuant to such State of Texas determination, adjust (up or down, depending on the facts) the amount claimed due for the Sales Tax Grant payment for the Sales Tax Reporting Period immediately following such State of Texas determination. If Company does not adjust the amount claimed due for the Sales Tax Grant payment for the Sales Tax Reporting Period immediately following such State of Texas determination City may, at its option, adjust the Sales Tax Grant payment for the Sales Tax Reporting Period immediately following such State of Texas determination. If the adjustment results in funds to be paid back to City, Company shall repay such amount to City within sixty (60) days after receipt of such State of Texas determination. The provisions of this Section shall survive termination of this Agreement.

(e) Sales Tax Grant Payment Termination; Suspension. The payment of Sales Tax Grants shall terminate on the effective date of determination by the State of Texas or other appropriate agency or court of competent jurisdiction that the Improvements are not a place of business resulting in Sales and Use Taxes being due the City from the sale of Taxable Items by Company consummated at the Improvements. In the event the State of Texas seeks to invalidate the Improvements as a place of business where Sales and Use Tax was properly remitted to the State of Texas (the "Comptroller Challenge") the payment of Sales Tax Grants by City hereunder shall be suspended until such Comptroller Challenge is resolved in whole favorably to City. In such event, Company shall not be required to refund Sales Tax Grants previously received from City provided Company is actively defending against and/or contesting the Comptroller Challenge and Company promptly informs City in writing of such Company actions and with copies of all documents and information related thereto. In the event the Comptroller Challenge is not resolved

favorably to City and/or in the event the State of Texas determines that the Improvements are not a place of business where the Sales and Use Tax was properly remitted to the State of Texas, and Sales and Use Tax Receipts previously paid or remitted to City relating to the Improvements are reversed and required to be repaid to the State of Texas, then the obligation to pay the Sales Tax Grants shall terminate and Company shall refund all Sales Tax Grants received by Company from City that relate to the Comptroller Challenge, which refund shall be paid to City within sixty (60) days of the date that the Comptroller Challenge required City to repay Sales and Use Tax Receipts.

(f) Indemnification. THE COMPANY AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY, ITS COUNCIL, OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY THE "CITY") HARMLESS FROM AND AGAINST ANY AND ALL REASONABLE LIABILITIES, DAMAGES, CLAIMS, LAWSUITS, JUDGMENTS, ATTORNEY FEES, COSTS, EXPENSES, AND DEMANDS BY THE STATE OF TEXAS THAT THE CITY HAS BEEN PAID ERRONEOUSLY, OVER-PAID OR INCORRECTLY ALLOCATED SALES AND USE TAX ATTRIBUTED TO THE PURCHASE OR SALE OF TAXABLE ITEMS BY THE COMPANY CONSUMMATED AT THE IMPROVEMENTS FOR ANY SALES TAX REPORTING PERIOD DURING THE TERM OF THIS AGREEMENT ("CLAIM"). IT BEING THE INTENTION OF THE PARTIES THAT THE COMPANY SHALL BE RESPONSIBLE FOR THE REPAYMENT OF SALES TAX GRANTS PAID TO COMPANY HEREIN BY CITY THAT INCLUDES SALES AND USE TAX RECEIPTS THAT THE STATE OF TEXAS HAS DETERMINED WERE ERRONEOUSLY, PAID, COLLECTED, DISTRIBUTED, OR ALLOCATED TO THE CITY.

THE INDEMNIFICATION PROVIDED ABOVE SHALL NOT APPLY TO ANY LIABILITY RESULTING SOLELY FROM THE ACTIONS OR OMISSIONS OF THE CITY. THE COMPANY SHALL BE OBLIGATED TO PAY REASONABLE ATTORNEY FEES AND OTHER THIRD-PARTY COSTS INCURRED BY THE CITY TO DEFEND OR CONTEST A CLAIM.

THE PROVISIONS OF THIS SECTION SHALL SURVIVE TERMINATION OF THIS AGREEMENT. THE PROVISIONS OF THIS SECTION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND DO NOT CREATE ANY OBLIGATIONS FROM OR GRANT ANY CONTRACTUAL OR OTHER RIGHTS TO ANY OTHER PERSON OR ENTITY, OTHER THAN OBLIGATIONS, IF ANY, THAT ARISE FROM COMPANY TO CITY TO PERFORM OBLIGATIONS CREATED BY THIS SECTION.

3.5 Current Revenue. The Grants shall be paid solely from annual appropriations from the general funds of the City or from such other funds of the City as may be legally set aside for such purpose consistent with Article III, Section 52(a) of the Texas Constitution.

3.6 Grant Limitations. Under no circumstances shall the obligations of the City hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. None of the obligations of the City under this Agreement shall be pledged or otherwise encumbered by Company in favor of any commercial lender and/or similar financial institution.

Article IV

Conditions to Grant

The obligation of the City to pay the Grants shall be conditioned upon the compliance and satisfaction by the Company of the terms and conditions of this Agreement and each of the conditions set forth in Article IV.

4.1 Payment Request. Company shall, as a condition precedent to the payment of each applicable Grant, timely provide City with the applicable Payment Request.

4.2 Good Standing. The Company shall not have an uncured breach or default of this Agreement, or a Related Agreement.

4.3 Required Use. During the term of this Agreement beginning on the Commencement Date and continuing until the Expiration Date the Real Property shall not be used for any purpose other than the Required Use, and the operation of the Real Property in conformance with the Required Use shall not cease for more than thirty (30) continuous days except in connection with, and to the extent of an event of Force Majeure or Casualty.

4.4 Construction of Improvements. Company shall subject to events of Force Majeure cause Commencement of Construction of the Improvements to occur on or before October 1, 2021; and shall subject to events of Force Majeure cause Completion of Construction of the Improvements to occur on or before October 1, 2022.

4.5 Continuous Ownership and Occupancy. The Company shall, beginning on the Commencement Date and continuing thereafter until the Expiration Date, continuously own or lease, and occupy the Real Property.

4.6 Sales Tax Certificate. Company shall during the term of this Agreement, provide to City a Sales Tax Certificate thirty (30) days after the end of each Sales Tax Reporting Period.

Article V Termination

5.1 Termination. This Agreement shall terminate upon any one or more of the following:

- (a) by written agreement of the Parties;
- (b) Expiration Date;
- (c) upon written notice, by either Party in the event the other Party breaches any of the terms or conditions of this Agreement, or a Related Agreement, and such breach is not cured within sixty (60) days after the nonbreaching Party sends written notice to the breaching Party of such breach;
- (d) upon written notice, by City, if Company suffers an event of Bankruptcy or Insolvency;
- (e) upon written notice, by City, if any Impositions owed to City or the State of Texas by Company shall become delinquent (provided, however, Company retains the right to timely

and properly protest and contest any such Impositions) and if Company does not resolve such delinquency within thirty (30) days of such written notice; or

(f) upon written notice, by either Party, if any subsequent Federal or State legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable.

5.2 Repayment. In the event the Agreement is terminated by City pursuant to Section 5.1 (c), (d), (e) or (f), Company shall immediately refund to City an amount equal to the Grants paid by City to Company preceding the date of such termination, with interest at the rate periodically announced by the *Wall Street Journal* as the prime or base commercial lending rate, or if the *Wall Street Journal* shall ever cease to exist or cease to announce a prime or base lending rate, then at the annual rate of interest from time to time announced by Citibank, N.A. (or by any other New York money center bank selected by City) as its prime or base commercial lending rate, from the date on which each Grant is paid by City until each such Grant is refunded by Company. The repayment obligation of Company set forth in this section shall survive termination.

5.3 Right of Offset. City may, at its option, offset any amounts due and payable under this Agreement against any debt (including taxes) lawfully due to City from Company, regardless of whether the amount due arises pursuant to the terms of this Agreement, a Related Agreement or otherwise and regardless of whether or not the debt due City has been reduced to judgment by a court.

Article VI Miscellaneous

6.1 Binding Agreement. The terms and conditions of this Agreement are binding upon the successors and permitted assigns of the Parties hereto. This Agreement may not be assigned without the express written consent of the City Manager.

6.2 Limitation on Liability. It is understood and agreed between the Parties that the Company, in satisfying the conditions of this Agreement, has acted independently, and the City assumes no responsibilities or liabilities to third parties in connection with these actions. The Company agrees to indemnify and hold harmless the City from all such claims, suits, and causes of actions, liabilities and expenses of any nature whatsoever by a third party arising out of the Company's failure to perform its obligations under this Agreement.

6.3 No Joint Venture. It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the Parties.

6.4 Authorization. Each Party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

6.5 Notice. Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return

receipt requested, addressed to the Party at the address set forth below or on the day received if sent by courier or otherwise hand delivered.

If intended for City, to:

Attn: City Manager
City of Coppell, Texas
P. O. Box 478
Coppell, Texas 75019

With a copy to:

Peter G. Smith
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Ross Tower
500 N. Akard
Dallas, Texas 75201

If intended for Company:

Attn: Jason McCann
Varidesk, LLC

With a copy to:

Coppell, Texas ____

6.6 Entire Agreement. This Agreement is the entire Agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the Parties that in any manner relates to the subject matter of this Agreement, except as provided in any Exhibits attached hereto.

6.7 Governing Law. The Agreement shall be governed by the laws of the State of Texas without regard to any conflict of law rules. Exclusive venue for any action concerning this Agreement shall be in the State District Court of Dallas County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

6.8 Amendment. This Agreement may only be amended by the mutual written agreement of the Parties.

6.9 Legal Construction. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the Parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

6.10 Recitals. The recitals to this Agreement are incorporated herein.

6.11 Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

6.12 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination

6.13 Employment of Undocumented Workers. During the term of this Agreement the Company agrees not to knowingly employ any undocumented workers and, if convicted of a violation under 8 U.S.C. Section 1324a (f), the Company shall repay the amount of the Grants and any other funds received by the Company from City as of the date of such violation within one hundred twenty (120) days after the date the Company is notified by City of such violation, plus interest at the rate of four percent (4%) compounded annually from the date of violation until paid. The Company is not liable for a violation of this section in relation to any workers employed by a subsidiary, affiliate, or franchisee of the Company or by a person with whom the Company contracts.

6.14 Conditions Precedent. This Agreement is expressly subject to and the obligations of the Parties are contingent upon Company closing the purchase of the Land on or before February 15, 2020.

[Signature page to follow]

EXECUTED on this _____ day of _____, 2020.

CITY OF COPPELL, TEXAS

By: _____
Karen Selbo Hunt, Mayor

ATTEST:

By: _____
Ashley Owens, City Secretary

APPROVED AS TO FORM:

By: _____
City Attorney

EXECUTED this the _____ day of _____, 2020.

VARIDESK, LLC

By: _____
Jason McCann, _____

EXHIBIT "A"
Legal Description of Property

BEING a 9.84 acre (428,553 square foot) tract of land situated in the Thomas W. Cousey Survey, Abstract Number 317, City of Coppell, Dallas County, Texas, and being part of Lot 1, Block 1 of Lots 1 & 2, Phase 1, Block 1, One Twenty One Business Park, an addition to the City of Coppell, Dallas County, Texas, as recorded in Volume 99157, Page 27 of the Deed Records of Dallas County, Texas (D.R.D.C.T.) and being all of a tract of land described in Special Warranty Deed to Sealy Canyon Drive Land, L.L.C, as recorded in Instrument Number 201600333502 of the Official Public Records of Dallas County, Texas (O.P.R.D.C.T.), and being all of Lot 6R, Block A of Prologis Park One Twenty One, Lots 5R and 6R, Block A, an addition to the City of Coppell, Dallas County, Texas, as recorded in Instrument Number 201600331182, O.P.R.D.C.T. and being all of called 5.93 acre tract of land described in deed to Prologis Logistics Services Incorporated, as recorded in Instrument Number 201500253657, O.P.R.D.C.T., and being more particularly described as follows:

BEGINNING at the northeast corner of a called 1.678 acre tract of land described as "Parcel 16" in deed to State of Texas, as recorded in Instrument Number 201200222193, O.P.R.D.C.T., said corner being the intersection of the east right-of-way line of State Highway 121, the south right-of-way line of said Canyon Drive (a 60-foot wide right-of-way), the north line of said Lot 1, and the point of curvature of a non-tangent circular curve to the left, having a radius of 460.27 feet, whose chord bears South 79 degrees 47 minutes 15 seconds East, a distance of 166.34 feet, from which a found monument bears South 73 degrees 03 minutes 47 seconds West, a distance of 1.0 feet;

THENCE Southeasterly, with the north of said Lot 1, the south right-of-way line of said Canyon Drive and with said curve, through a central angle of 20 degrees 49 minutes 17 seconds, an arc distance of 167.26 feet to a corner, from which a 5/8-inch found iron rod with cap stamped "M. FELOBUSCH" bears South 55 degrees 55 minutes 26 seconds West, a distance of 0.4 feet;

THENCE North 89 degrees 43 minutes 31 seconds East, with the north line of said Lot 1 and the south right-of-way line of said Canyon Drive, a distance of 8.24 feet to a set crow's foot for the intersection of said south right-of-way and the west right-of-way line of Northwest Drive (a 33-foot wide right-of-way), said corner being the point of curvature of a tangent circular curve to the right, having a radius of 25.00 feet, whose chord bears South 22 degrees 48 minutes 47 seconds East, a distance of 19.17 feet;

THENCE with the west right-of-way line of said Northwest Drive, the following bearings and distances:

Southerly, with the east line of said Lot 1 and with said curve, through a central angle of 45 degrees 04 minutes 36 seconds, an arc distance of 19.67 feet to a found "X" cut in concrete for corner;

South 00 degrees 16 minutes 29 seconds East, with the east line of said Lot 1, a distance of 382.20 feet to a set "X" cut in concrete for the southeast corner of said Lot 1;

EXHIBIT “A”
Legal Description of Property

South 89 degrees 43 minutes 54 seconds West, with the south line of said Lot 1, a distance of 2.75 feet to a 1/2-inch found iron rod with yellow plastic cap stamped “HALFF” (hereinafter referred to as “with cap”) for the northeast corner of said Lot 6R;

THENCE with the common east line of said Lot 6R and the west right-of-way line of said Northwest Drive (a 38-foot wide right-of-way), the following bearings and distances:

South 00 degrees 11 minutes 52 seconds East, a distance of 1.08 feet to a 1/2-inch found iron rod with cap for the point of curvature of a tangent circular curve to the right, having a radius of 181.00 feet, whose chord bears South 32 degrees 38 minutes 48 seconds West, a distance of 195.43 feet;

Southwesterly, with said curve, through a central angle of 65 degrees 20 minutes 56 seconds, an arc distance of 206.44 feet to a 1/2-inch found iron rod with cap for the point of reverse curvature of a tangent circular curve to the left, having a radius of 219.00 feet, whose chord bears South 53 degrees 43 minutes 48 seconds West, a distance of 88.01 feet;

Southwesterly, with said curve, through a central angle of 23 degrees 10 minutes 56 seconds, an arc distance of 88.61 feet to a 1/2-inch found iron rod with cap for corner;

South 42 degrees 08 minutes 20 seconds West, a distance of 412.07 feet to a 1/2-inch found iron rod with cap for corner;

South 87 degrees 08 minutes 20 seconds West, a distance of 26.85 feet to a 1/2-inch found iron rod with cap for the point of curvature of a non-tangent circular curve to the left, having a radius of 310.50 feet, whose chord bears North 53 degrees 13 minutes 15 seconds West, a distance of 33.22 feet, said corner being the intersection of the northwest right-of-way line of said Northwest Drive and the northeast right-of-way line of Freeport Parkway (a variable width right-of-way);

THENCE with the northeast right-of-way line of said Freeport Parkway and the southwest line of said Lot 6R, the following bearings and distances:

Northwesterly, with said curve, through a central angle of 06 degrees 07 minutes 58 seconds, an arc distance of 33.24 feet to a 1/2-inch found iron rod with cap for corner;

North 56 degrees 17 minutes 14 seconds West, a distance of 89.18 feet to a 1/2-inch found iron rod with cap for the point of curvature of a tangent circular curve to the right, whose chord bears North 52 degrees 11 minutes 09 seconds West, a distance of 160.85 feet;

Northwesterly, with said curve, through a central angle of 08 degrees 12 minutes 09 seconds, an arc distance of 160.99 feet to a 1/2-inch found iron rod with cap for corner at the intersection of the northeast right-of-way line of said Freeport Parkway with the southeast right-of-way line of said State Highway 121;

EXHIBIT "A"
Legal Description of Property

THENCE with the southeast right-of-way line of said State Highway 121, the following bearings and distances:

North 43 degrees 04 minutes 04 seconds West, with the southwest line of said Lot 6R, a distance of 9.35 feet to a found monument for corner;

North 47 degrees 59 minutes 54 seconds West, with the southwest line of said Lot 6R, a distance of 75.82 feet to a found monument for corner;

North 22 degrees 13 minutes 47 seconds West, with the southwest line of said Lot 6R, a distance of 85.52 feet to a found monument for corner;

North 37 degrees 38 minutes 29 seconds East, with the northwest line of said Lot 6R, a distance of 145.94 feet to a found monument for corner;

North 41 degrees 19 minutes 26 seconds East, with the northwest line of said Lot 6R, a distance of 135.07 feet to a found monument for the northwest corner of said Lot 6R, said corner being on the south line of said Lot 1;

South 89 degrees 43 minutes 54 seconds West, with the south line of said Lot 1, a distance of 0.47 feet to a found monument for the southwest corner of said Lot 1 and the southeast corner of said 1.678 acre tract;

THENCE with the southeast right-of-way line of said State Highway 121 and the northwest line of said Lot 1, the following bearings and distances:

North 41 degrees 19 minutes 26 seconds East, a distance of 267.77 feet to a found monument for corner;

North 37 degrees 08 minutes 49 seconds East, a distance of 256.90 feet to a found monument for corner;

North 75 degrees 28 minutes 20 seconds East, a distance of 104.95 feet to the POINT OF BEGINNING AND CONTAINING 9.84 acres (428,553 square feet) of land, more or less.