

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 McKesson Medical-Surgical, Inc, a Virginia corporation (“Lessee”) (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, Lessee currently leases and occupies 4250 Patriot Drive, Suite 100, Coppel, Texas, and has or intends to amend the existing lease or enter into a new lease for approximately 249,000 additional square feet of space at 4250 Patriot Drive, Coppel, Texas (the “Leased Premises”) for a period of at least ten (10) years (the “Lease”); and

WHEREAS, Lessee intends to locate certain taxable tangible personal property at the Leased Premises; and

WHEREAS, Lessee has advised the City that a contributing factor that would induce the Lessee to enter into the Lease and occupy the Leased Premises would be an agreement by the City to provide an economic development grant to the Lessee as set forth herein; and

WHEREAS, the City has adopted programs for promoting economic development and this Agreement and the economic development incentives set forth herein are given and provided by the City pursuant to and in accordance with those programs; and

WHEREAS, the City is authorized by Article 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code 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 determined that making an economic development grant to the Lessee 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 last date of execution hereof ("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:

"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; provided, however, "Bankruptcy or Insolvency" shall not include an event that does not affect the Lessee's ability to continue to make the Required Use of the Leased Premises and otherwise to meet its obligations under this Agreement.

"Base Year" shall mean 2018.

"Base Year Value" shall mean the Taxable Value of the FF&E as of January 1, 2018.

"City" shall mean the City of Coppel, Texas.

"Commencement Date" shall mean the date the City has issued a certificate of occupancy for Lessee to occupy the Leased Premises.

"Expiration Date" shall mean March 1 of the calendar year following the tenth (10th) anniversary date of the First Grant Year.

"FF&E" shall mean furniture, fixtures and equipment located at the Leased Premises owned or leased by Lessee. FF&E does not include supplies, inventory, Goods in Transit or Freeport Goods.

"FF&E Grants" shall mean ten (10) annual economic development grants to be provided by City, each in an amount equal to seventy-five percent (75%) of the portion of the Taxable Value of the FF&E for the applicable Tax Year that exceeds the Base Year Value, to be paid as set forth herein.

"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 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.

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

“Grants” shall collectively mean the Inventory Grants and the FF&E Grants.

“Grant Year” shall mean a given Tax Year, except that the First Grant Year shall mean the Tax Year commencing January 1 of the calendar year following the Commencement Date.

“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 the Lessee or any property or any business owned by Lessee within the City.

“Improvements” or “Leased Premises” shall mean approximately 249,000 square feet of distribution space in the building located 4250 Patriot Drive, Coppell, Texas 75019.

“Inventory Grants” shall mean ten (10) annual economic development grants to be provided by City, each in an amount equal to seventy-five percent (75%) of the City ad valorem taxes assessed against the Inventory and collected by the City for the applicable Tax Year, to be paid as set forth herein.

“Lease” shall mean Lessee’s lease of the Leased Premises for a period of not less than ten (10) years commencing on the Lease Inception Date.

“Lease Inception Date” shall mean the commencement date of the lease term under the Lease, but no later than August 1, 2018.

“Lessee” shall mean McKesson Medical-Surgical, Inc, a Virginia corporation.

“Payment Request” shall mean a written request from Lessee to City for payment of the applicable FF&E or Inventory Grant, which request shall be accompanied by copies of tax statement and/or receipt(s) and/or other evidence reasonably satisfactory to City to establish that the ad valorem taxes assessed by City against the Tangible Personal Property have been timely paid for such Grant Year.

“Related Agreements” shall mean any agreement (other than this Agreement) by and between the City and Lessee and/or any of its affiliated or related entities.

“Required Use” shall mean Lessee’s continuous occupancy of the Leased Premises and the continuous operation of a distribution center at the Leased Premises.

“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 Lessee and located in the Leased Premises on January 1 of a given Tax Year. Tangible Personal Property shall not include Freeport Goods or Goods in Transit.

“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 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 Inventory Grants. Subject to the continued satisfaction of all the terms and conditions of this Agreement by Lessee, and provided the Taxable Value of the Inventory is at least Ten Million Dollars (\$10,000,000.00) (the “Minimum Inventory Taxable Value”) for the applicable Grant Year, City agrees to provide Lessee with ten (10) Inventory Grants to be paid within thirty (30) days after receipt of a 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 year following the First Grant Year, provided the City ad valorem taxes assessed against the Tangible Personal Property have been paid in full for the respective Grant Year (i.e., the Tax Year immediately preceding the year in which an Inventory Grant is to be made) prior to the delinquency date. The failure of the Inventory to have a Taxable Value of at least the Minimum Inventory Taxable Value as of January 1 of any calendar year during the term of this Agreement shall not be considered an event of default or breach of this Agreement, but rather such event shall result in the forfeiture of the Inventory Grant for the Inventory for such Tax Year.

3.2 FF&E Grants. Subject to the continued satisfaction of all the terms and conditions of this Agreement by Lessee, and provided the Taxable Value of the FF&E is at least Fifteen Million Dollars (\$15,000,000.00) (the “Minimum FF&E Taxable Value”) for the applicable Grant Year, City agrees to provide Lessee with ten (10) FF&E Grants to be paid within thirty (30) days after receipt of a 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 year following the First Grant Year, provided the City ad valorem taxes assessed against the Tangible Personal Property have been paid in full for the respective Grant Year (i.e., the Tax Year immediately preceding the year in which an FF&E Grant is to be made) prior to the delinquency date. The failure of the FF&E to have a Taxable Value of at least the Minimum FF&E Taxable Value as of January 1 of any calendar year during the term of this Agreement shall not be considered an event of default or breach of this Agreement, but rather such event shall result in the forfeiture of the FF&E Grant for the FF&E for such Tax Year.

3.3 Tax Protest. In the event Lessee 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 Tangible Personal Property with the applicable appraisal district (or its successor), the obligation of City to provide the respective Grants with respect to the Inventory and/ or FF&E for such Tax Year shall be delayed until a final determination has been made of such protest or contest. In the event Lessee or another party's protests and/or contests results in a final determination that changes the amount of ad valorem taxes assessed and due for the Tangible Personal Property (or portion thereof) after any Inventory or FF&E Grant has been paid for such Tax Year, the Inventory and/or FF&E Grant, as the case may be, for such Tax Year shall be adjusted (increased or decreased as the case may be) accordingly on the date of payment of the next FF&E and/or Inventory Grant, or within thirty (30) business days after such determination in the event no further Grants are due under the Agreement.

3.4 Refunds and Underpayments of Grants. In the event City reasonably determines that the amount of any Inventory and/or FF&E Grant paid by City to Lessee was incorrect, Lessee shall, within thirty (30) days after receipt of written notification thereof from City specifying the amount by which such Grant exceeded the correct amount to which Lessee was entitled (together with such records, reports and other information necessary to support such determination), pay such amount to City. If City reasonably determines that the amount by which such Grant was less than the correct amount to which Lessee was entitled (together with such records, reports and other information necessary to support such determination), City shall, within thirty (30) days, pay the adjustment to Lessee.

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. Further, the City shall not be obligated to pay any commercial bank, lender or similar institution for any loan or credit agreement made by Lessee.

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; provided; however, the City agrees during the term of this Agreement to make a good faith effort to appropriate funds each year to pay the Grants for the then ensuing fiscal year. Further, the City shall not be obligated to pay any commercial bank, lender or similar institution for any loan or credit agreement made by the Lessee. None of the obligations of the City under this Agreement shall be pledged or otherwise encumbered by the Lessee 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 Lessee of the terms and conditions of this Agreement and each of the conditions set forth in Article IV.

4.1 Payment Request. Lessee 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 Lessee 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 Leased Premises shall not be used for any purpose other than the Required Use, and the operation of the Leased Premises 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 Continuous Lease and Occupancy. The Lessee shall, beginning on the Commencement Date and continuing thereafter until the Expiration Date, continuously lease and occupy the Leased Premises.

4.5 Lease. The Lessee shall have entered the Lease on or before August 1, 2018, and the Lessee shall occupy the Leased Premises on or before Lease Inception Date.

Article V Termination

5.1 Termination. This Agreement shall terminate upon any one 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 thirty (30) days after the non-breaching Party sends written notice to the breaching Party of such breach;
- (d) upon written notice, by the City, if Lessee suffers an event of Bankruptcy or Insolvency;
- (e) upon written notice, by the City, if any Impositions owed to the City or the State of Texas by Lessee shall become delinquent (provided, however, the Lessee retains the right to timely and properly protest and contest any such Impositions); 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 the City pursuant to Section 5.1 (c), (d), (e) or (f), the Lessee shall immediately refund to the City an amount equal to the Grants paid by the City to the Lessee preceding the date of such termination, plus interest at the rate of interest 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 the City until each such Grant is refunded by the Lessee. The repayment obligation of Lessee set forth in this section shall survive termination.

5.3 Right of Offset. The City may, at its option, offset any amounts due and payable under this Agreement or a Related Agreement against any debt (including taxes) lawfully due to the City from the Lessee, 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 the 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 Lessee, 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 Lessee 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 Lessee'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 actually 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 Street
Dallas, Texas 75201

If intended for Lessee, to

Attn: Susan Wooten
McKesson Medical-Surgical, Inc.
One Post Street, 30th Floor
San Francisco, California 94104

With a copy to:

Attn: Tami Maldonado, Tax Department
McKesson Corporation
6555 North State Highway 161
Irving, Texas 75039

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. For the avoidance of doubt, it is expressly agreed by the Parties that the right of Lessee to make any Payment Request

and the obligation of City to verify employment and pay any Grant to which Lessee may have otherwise been entitled prior to the termination of this Agreement shall survive termination of this Agreement.

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

6.14 Conditions Precedent. This Agreement is expressly subject to and contingent upon: (i) the Lessee entering the Lease on or before August 1, 2018; and (ii) the Lessee occupying the Leased Premises on or before Lease Inception Date.

[Signature page to follow]

EXECUTED on this _____ day of _____, 2018.

CITY OF COPPELL, TEXAS

By: _____
Karen Hunt, Mayor

Attest:

By: _____
Christel Pettinos, City Secretary

Approved as to Form:

By: _____
City Attorney

EXECUTED this the _____ day of _____, 2018.

McKESSON MEDICAL-SURGICAL, INC.

By: _____
Name: _____
Title: _____