



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		09/10/12		
Department:		Economic Development		
Department Head		Sally Bane		
Agenda Coordinator (include phone #): Linda Thomason x8301				
CAPTION				
<p>A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an agreement by and between the City of Plano, Texas, Winzer Corporation, a Texas corporation, and WR Plano Parkway, LLC, a Georgia limited liability company, providing for real and business personal property tax abatement; and authorizing its execution by the City Manager or his authorized designee; and providing an effective date.</p>				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 2011-12	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(S): N/A				
COMMENTS: This item has no fiscal impact. Strategic Plan Goal: Providing economic development incentives relates to the City's goal of Strong Local Economy.				
SUMMARY OF ITEM				
<p>This relates to Winzer Corporation and WR Plano Parkway, LLC request for tax abatement on Reinvestment Zone131 and the creation of the zone at 4060 E. Plano Parkway.</p>				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Resolution				
Tax Abatement Agreement				

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an agreement by and between the City of Plano, Texas, Winzer Corporation, a Texas corporation, and WR Plano Parkway, LLC, a Georgia limited liability company, providing for real and business personal property tax abatement; and authorizing its execution by the City Manager or his authorized designee; and providing an effective date.

WHEREAS, the City Council has been presented a proposed Tax Abatement Agreement by and between the City of Plano, Texas, Winzer Corporation, a Texas corporation, and WR Plano Parkway, LLC, a Georgia limited liability company, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and

WHEREAS, upon full review and consideration of the Agreement and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions thereof should be approved, and that the City Manager or his authorized designee shall be authorized to execute it on behalf of the City of Plano.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS:

Section I. The terms and conditions of the Agreement having been reviewed by the City Council of the City of Plano, Texas, and found to be acceptable and in the best interests of the City of Plano and its citizens, are hereby in all things approved.

Section II. The City Manager or his authorized designee is hereby authorized to execute the Agreement and all other documents in connection therewith on behalf of the City of Plano, substantially according to the terms and conditions set forth in the Agreement.

Section III. This Resolution shall become effective from and after its passage.

DULY PASSED AND APPROVED this the 10th day of September, 2012.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

THE STATE OF TEXAS)
)
COUNTY OF COLLIN)

TAX ABATEMENT AGREEMENT

This Tax Abatement Agreement (this “Agreement”) is entered into by and between the City of Plano, Texas, a home-rule municipal corporation of Collin and Denton Counties, Texas, duly acting herein by and through its City Manager, hereinafter referred to as “City”; Winzer Corporation, a Texas corporation, duly acting by and through its authorized representative, hereinafter referred to as “Tenant”; and WR Plano Parkway, LLC, a Georgia limited liability company, duly acting by and through its authorized representative, hereinafter referred to as “Owner.”

WITNESSETH:

WHEREAS, on the 10th day of September, 2012, the City Council of the City of Plano, Texas, passed Ordinance No. 2012- - establishing Reinvestment Zone No. 131, for commercial/industrial tax abatement, hereinafter referred to as the “Ordinance,” as authorized by V.T.C.A. Tax Code, Chapter 312.001, et seq., cited as the Property Redevelopment and Tax Abatement Act, hereinafter referred to as “Act”; and

WHEREAS, the City has adopted a policy statement for Tax Abatement by Resolution No. 2012-1-6(R) stating that it elects to be eligible to participate in tax abatement (the “Policy Statement”); and

WHEREAS, the Policy Statement sets forth appropriate guidelines and criteria governing tax abatement agreements to be entered into by the City as contemplated by the Act; and

WHEREAS, the tax abatement will maintain and enhance the commercial/industrial economic and employment base of the Plano area thereby benefitting the City in accordance with the said Ordinance and Act; and

WHEREAS, the contemplated use of the Real Property, as hereinafter defined, and the other terms hereof are consistent with encouraging development of said Reinvestment Zone No. 131 in accordance with the purposes for its creation and are in compliance with the intent of the Policy Statement and the Ordinance and similar guidelines and criteria adopted by the City and all applicable law.

NOW THEREFORE, the parties hereto do mutually agree as follows:

1. Owner’s Real Property subject to this Agreement is described by metes and bounds in **EXHIBIT “A”** (the “Real Property”) attached hereto and made a part hereof.
2. The tangible personal property subject to this Agreement shall be personal property, excluding inventory and supplies, used within Reinvestment Zone No. 131, which shall be hereinafter referred to as the “Personalty.” The Personalty is to have an assessed taxable value as

determined by the Collin County Appraisal District of not less than Four Million Dollars (\$4,000,000.00) on the Real Property by December 31, 2013, and is or will be owned by Tenant.

3. Tenant shall maintain the taxing situs of the Personalty on the Real Property and may not relocate the taxing situs of the Personalty in other Reinvestment Zones in the City.

IMPROVEMENTS

4. (a) The Tenant agrees to add the Personalty required under Section 2 by July 1, 2013, unless an extension as a result of an Event of Force Majeure is approved by the City in writing.

(b) By December 31, 2013, the Owner or Tenant shall make or cause to be made improvements to the Real Property consisting of a new building that is at least 100,000 gross square feet for office and warehouse space with an assessed taxable value of not less than Four Million, Four Hundred Thousand Dollars (\$4,400,000.00) for **new improvements added** to the Real Property between the dates of June 1, 2012 through June 30, 2013, as determined by the Collin County Central Appraisal District. The Real Property abatement for the new improvements shall begin in the January 1, 2014 tax year pursuant to Section 11(a) herein unless an extension as a result of an Event of Force Majeure has been approved by the City in writing. The abatement shall not include any existing Real Property taxable value assessed on the property as of June 1, 2012.

(c) In the Event of a Force Majeure "Event" the affected party shall notify the City in writing not less than sixty (60) days of the onset of the Event with supporting documentation, the anticipated duration and the actions that the party will take to alleviate the Event. The City Manager shall consider such request and may grant an extension of time to complete the obligations; such extension shall not be unreasonably withheld. If the Event results in a delay of meeting the required improvement value, the party requesting the extension agrees that in the following year the minimum required taxable value of the improvements and/or Personalty shall be met.

(d) The term "Event of Force Majeure" means 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, shortages or unavailability of materials or labor, or work stoppages any of which event(s) directly impact the Owner or Tenant at the Real Property. The term shall not include a downturn in the economy.

DEFAULT

5. Any of the following events shall be deemed a breach of this Agreement resulting in default:

(a) Tenant allows its personal property taxes or Owner allows its Real Property improvement taxes owed the City to become delinquent and fails to either (1) timely and properly

follow the legal procedures for protest and/or contest of any such ad valorem taxes, or (2) cure such delinquency within thirty (30) days of receipt of notice of such delinquency; or

(b) Owner or Tenant fails to construct the improvements required in Section 4(b); or

(c) (i) In the first year of the abatement period for the Personalty, the assessed taxable value is less than the minimum amount set forth in Section 2; or

(ii) At any time during the Agreement, the Personalty is removed from the Real Property and the result is the taxable appraised value of the Personalty is below the minimum amount set forth in Section 2; or

(d) At any time during the Agreement, the assessed taxable value of the Real Property improvements is less than the minimum amount set forth in Section 4(b) as a result of the Owner's protest; or

(e) (i) Tenant or Owner or Owner's duly authorized representative fails to provide the annual certification as required in Section 9 below; or

(ii) Tenant or Owner fails to comply with the Assignment provision in Section 10; or

(f) Tenant or Owner has been convicted of a violation under 8 U.S.C. Section 1324a(f) regarding the unlawful employment of aliens at the Real Property.

6. In the event that the Tenant or Owner defaults under Section 5(b) of this Agreement, the City shall give all parties written notice of such default and if the default is not cured or a waiver obtained thereof within thirty (30) days of said written notice, this Agreement shall be automatically terminated as to all parties except any damages as specified below shall survive the termination of this Agreement. In the event of a default under Section 5(a) (c) (d) (e) or (f) above, the City shall give the defaulting party written notice of such default and if the default is not cured or a waiver obtained thereof within thirty (30) days of said written notice, this Agreement shall be automatically terminated as to the defaulting party except any damages as specified below shall survive the termination of this Agreement. Notice shall be in writing as provided below. The City Manager is authorized on behalf of the City to send notice of default and to terminate the Agreement for any default that is not cured.

7. Upon the occurrence of an event of default under Section 5(a) (b) or (f) above and that remains uncured, all taxes, including previously abated taxes which would have been paid to the City by the defaulting party, without the benefit of this Agreement, shall become due and owing to the City from the defaulting party, together with interest charged from the date of this Agreement at the statutory rate for delinquent taxes as determined by V.T.C.A., Tax Code § 33.01, but without the addition of penalty other than that mandated by V.T.C.A., § 33.01 or 33.07 and Texas Government Code Chapter 2264.

Upon the occurrence of an event of default under Section 5(c) (d) or (e) above and that remains uncured, at the City's sole option, it may require all or a portion of all previously abated taxes which would have been paid to the City by the defaulting party without the benefit of this Agreement to become due and owing to the City from the defaulting party, which shall be Tenant, not Owner, with respect to Section 5(c), together with interest charged from the date of this Agreement at the statutory rate for delinquent taxes as determined by V.T.C.A., Tax Code § 33.01, but without the addition of penalty other than that mandated by V.T.C.A., § 33.01 or 33.07. City shall exercise such option within ninety (90) days of notice of default.

EFFECT OF TERMINATION/SURVIVAL OF OBLIGATIONS

8. The rights, responsibilities and liabilities of the parties under this Agreement shall be extinguished upon the applicable effective date of termination of this Agreement, except for any obligations or default(s) that existed prior to such termination or as otherwise provided herein and those liabilities and obligations shall survive the termination of this Agreement, including the refund provision, maintenance of records, and access thereto.

ANNUAL CERTIFICATION

9. Beginning November 1, 2014, and on or before the 1st day of November of each calendar year thereafter during the Term (as defined below) of this Agreement, the Tenant and Owner, or their successors or assigns, must each provide annual certification (substantially in the form attached as **EXHIBIT "B"** hereto) to the City certifying compliance with each applicable term of the Agreement. Owner and Tenant hereby grant to the other, the limited power of attorney for the term of this Agreement for the limited purpose of making its annual certification on behalf of the other party if the applicable party fails to do so.

ASSIGNMENT

10. If either Tenant or Owner wishes to assign its rights and duties under this Agreement, it must comply with the following provisions. A failure to comply is an event of default and all remedies may apply including but not limited to a suspension of the abatement for the year(s) for which non-compliance occurred.

(a) City Consent Required. Except as permitted by (b) below, this Agreement may not be assigned without the express written consent of the City. The assignment agreement must be furnished in a form acceptable to the City and be provided at least sixty (60) days prior to the effective assignment date for the City Council review and approval.

(b) Exceptions to City Consent. Tenant or Owner may assign this Agreement without obtaining the City's consent:

- (i) To a wholly owned affiliate of Tenant or Owner; or
 - (ii) Any person or entity that directly or indirectly acquires, through merger, sale of stock, purchase or otherwise, all or more than ninety percent (90%) of the assets of the Tenant or Owner; or
 - (iii) Upon the sale of the Real Property by Owner.
- (c) Prior to the effective date of the assignment or sale under (a) or (b) above, the assigning party agrees to have the assignee or successor execute an agreement with the City to be bound to all the terms and conditions of this Agreement, without exception, and the assignee or successor shall be responsible for any default(s) of the assignee or seller that occurred prior to or after the effective date of the assignment.

ABATEMENT PROVISIONS

11. Subject to the terms and conditions of this Agreement, and subject to the rights of holders of any outstanding bonds of the City, a portion of ad valorem personal property taxes and Real Property improvement taxes belonging to Tenant and Owner located on the Real Property otherwise owed to the City shall be abated as follows:

(a) (i) The tax abatement as to Real Property improvements, as provided for herein, shall be for a period of ten (10) tax years, from January 1, 2014 through December 31, 2023.

(ii) The tax abatement as to Personalty, as provided for herein, shall be for a period of ten (10) tax years, from January 1, 2014 through December 31, 2023.

(b) In accordance with all applicable federal, state, and local laws and regulations, the abatement shall be based on amounts equal to fifty percent (50%) of the taxable value of the Personalty and Real Property improvements for the tax years set forth above.

(c) The Tenant or Owner shall have the right to protest and/or contest any assessment of the Personalty or Real Property improvements where such assessment is above the minimum amount required to be maintained under Sections 2 and 4 of this Agreement. The abatement shall be applied to the amount of taxes finally determined to be due as a result of any such protest and/or contest. Notwithstanding the above, it shall be a breach of this Agreement if assessed values fall below those required in Sections 2 and 4 as a result of a Tenant or Owner filed protest and/or contest, or the removal of Personalty from the Real Property.

NOTICE

12. Notices required to be given to any party to this Agreement shall be given personally or by registered or certified mail, return receipt requested, postage prepaid, addressed to the party at its address as set forth below, and, if given by mail, shall be deemed delivered as of the date deposited in the United States mail:

For City by notice to:

City of Plano
Attention: Mr. Bruce D. Glasscock
City Manager
1520 Avenue K
P.O. Box 860358
Plano, TX 75086-0358

With copy to:

City of Plano
Attention: Ms. Diane C. Wetherbee
City Attorney
1520 Avenue K
P.O. Box 860358
Plano, TX 75086-0358

For Tenant by notice before relocation to:

Winzer Corporation
Attention: Mr. John P. Carney
President
10560 Markison Rd.
Dallas, TX 75238

For Tenant by notice after relocation to:

Winzer Corporation
Attention: Mr. John P. Carney
President
4060 E. Plano Parkway
Plano, TX 75074

For Owner by notice to:

WR Plano Parkway, LLC
Attention: Mr. Bob Rice, Partner
3030 LBJ Freeway, Suite 1390
Dallas, TX 75234

With copy to:

DLA Piper, LLP (US)
Attention: Mr. Craig B. Anderson
1717 Main Street, Suite 4600
Dallas, TX 75201

Any party may change the address to which notices are to be sent by giving the other parties written notice in the manner provided in this paragraph.

MISCELLANEOUS PROVISIONS

13. During the term of the Agreement, the Tenant and Owner further agree that the City, its agents and employees, shall have reasonable right (with no less than five (5) business days prior written notice to Owner) to access the Real Property during regular business hours to inspect the Personalty and Real Property improvements in order to insure that the location of the Personalty and Real Property improvements are in accordance with this Agreement and all applicable federal, state, and local laws and regulations.

14. It is understood and agreed between the parties that the Tenant and Owner, in performing their respective obligations hereunder, are acting independently, and the City assumes no responsibilities or liabilities in connection therewith to third parties and Tenant and Owner agree to indemnify and hold harmless City from any and all claims, suits, and causes of actions, including reasonable attorneys' fees, of any nature whatsoever arising out of their respective defaults of their obligations hereunder.

15. Based upon the certification provided by Owner and Tenant, the City represents that the Real Property is not owned by any member of the City Council of the City of Plano or by any member of the Planning and Zoning Commission.

16. This Agreement was authorized by Resolution of the City Council at its Council meeting on the 10th day of September, 2012, authorizing the City Manager to execute the Agreement on behalf of the City.

17. This Agreement was entered into by Tenant and Owner pursuant to their duly authorized representatives.

18. This instrument shall constitute a valid and binding agreement between the City, the Tenant and the Owner when executed in accordance herewith.

19. If any term or provision of this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement (or the application of such term or provision, to persons or circumstances other than those in respect of which it is invalid or unenforceable) except those terms or provisions, which are made subject to or conditioned upon such invalid or unenforceable term or provision, shall not be affected thereby, and each other term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

20. This Agreement is performable in Collin County, Texas.

This Agreement shall be effective upon the last date on which all parties have executed this agreement.

ATTEST:

CITY OF PLANO, TEXAS, a home-rule
municipal corporation

Diane Zucco, CITY SECRETARY

Bruce D. Glasscock, CITY MANAGER
Date: _____

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ATTEST:

TENANT
Winzer Corporation, a Texas corporation

Title: _____

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

ATTEST:

OWNER
WR Plano Parkway, LLC,
a Georgia limited liability company

Title: _____

By: Weeks Robinson Industrial Fund I,
LP, its manager

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

EXHIBIT "A"
LEGAL DESCRIPTION

DESCRIPTION, of an 8.357 acre tract of land situated in the J. T. McCullough Survey, Abstract No. 633, Collin County, Texas; said tract being all of Lot 1, Block A, Plano Distribution Center, an addition to the City of Plano, Texas according to the plat recorded in Volume 2012, Page 221 of the Official Public Records of Collin County, Texas and being part of that tract of land described in Special Warranty Deeds to Plano Distribution Center, LTD recorded in Instrument No. 2000-0120111 and 2001-0066343 of said Official Public Records; said 8.357 acre tract being more particularly described as follows:

BEGINNING, at a 1/2-inch iron rod with "PIBURN PARTNERS" cap found at the south end of a right-of-way corner clip at the intersection of the west right-of-way line of North Star Road (a variable width right-of-way) and the south right-of-way line of Plano Parkway (a variable width right-of-way);

THENCE, in a southerly direction along the said west line of North Star Road the following two (2) calls:

South 02 degrees, 04 minutes, 06 seconds West, a distance of 278.28 feet to a 1/2-inch iron rod with "PIBURN PARTNERS" cap found at the beginning of a tangent curve to the left;

Along said curve to the left, having a central angle of 16 degrees, 55 minutes, 18 seconds, a radius of 1,055.00 feet, a chord bearing and distance of South 06 degrees, 23 minutes, 40 seconds East, 310.45 feet, an arc distance of 311.58 feet to a 3-inch aluminum disk stamped with "PACHECO KOCH" found; said point being the northeast corner of a tract of land described in Quitclaim Deed to Flextronics International USA, Inc. recorded in Instrument No. 2001-0066342 of said Official Public Records;

THENCE, in a westerly direction, departing the said west line of North Star Road and along the north line of said Flextronics tract, the following two (2) calls:

North 88 degrees, 55 minutes, 16 seconds West, a distance of 311.69 feet to a 60D nail in 1"x1" iron bar found for an angle point;

North 88 degrees, 31 minutes, 18 seconds West, a distance of 282.17 feet to a point for corner (unable to set), said point being the southeast corner of Lot 2, Block A, of said Plano Distribution Center;

THENCE, departing the said north line of the Flextronics tract, and along the east line of said Lot 2 the following three (3) calls;

North 01 degrees, 23 minutes, 14 seconds East, a distance of 533.25 feet to a 1/2-inch iron rod with "PACHECO KOCH" cap set for corner,

North 45 degrees, 54 minutes, 49 seconds East, a distance of 174.10 feet to a 1/2-inch iron rod with "PACHECO KOCH" cap set for an angle point;

North 11 degrees, 40 minutes, 35 seconds East, a distance of 59.42 feet to a 1/2-inch iron rod with "PACHECO KOCH" cap found for corner in the said south line of Plano Parkway, said point being the northeast corner of said Lot 2;

THENCE, in a southeasterly direction along the said south line of Plano Parkway, the following three (3) calls:

South 78 degrees, 19 minutes, 25 seconds East, a distance of 94.48 feet to a 3-inch aluminum disk stamped "PACHECO KOCH" found for an angle point;

South 71 degrees, 43 minutes, 32 seconds East, a distance of 127.36 feet to a 1/2-inch iron rod with "PACHECO KOCH" cap set for an angle point;

South 78 degrees, 11 minutes, 40 seconds East, a distance of 174.58 feet to a 5/8-inch iron rod with "LTRA" cap found at the north end of said corner clip at the intersection of the said south line of Plano Parkway and the said east line of North Star Road;

THENCE, South 38 degrees, 16 minutes, 05 seconds East, along said corner clip, a distance of 56.25 feet to the POINT OF BEGINNING;

CONTAINING, 364,049 square feet or 8.357 acres of land, more or less.

**EXHIBIT “B”
CERTIFICATION FORM**

[DATE]

City of Plano
Finance Department
P.O. Box 860358
Plano, Texas 75086-0358

RE: Certification Form – Reinvestment Zone No. 131
Tax Abatement Agreement (the “Agreement”) between Winzer Corporation (“Tenant”),
WR Plano Parkway, LLC (“Owner”) and the City of Plano.

This letter certifies that Tenant and Owner are in compliance with each applicable term as set forth in the Agreement. This form is due on November 1 of each year beginning in 2014 and with the last certification due in the year 2023. [Tenant/Owner] makes this certification on behalf of [Owner/Tenant] pursuant to its power of attorney in Section 9 of the Agreement.

Winzer Corporation, a Texas corporation,
as Tenant and on behalf of WR Plano
Parkway, LLC, a Georgia limited liability
company as Owner

or
WR Plano Parkway, LLC, a Georgia limited
liability company as Owner and on behalf of
Winzer Corporation, a Texas corporation, as
Tenant

By: _____
Name: _____
Title: _____
Company: _____