

SALES TAX PARTICIPATION AGREEMENT

This AGREEMENT (the "Agreement") is made and entered into as of the 17th day of May, 2016, by and between the CITY of BEAUMONT, a municipal corporation ("City"), and Wolverine Distribution, Inc., a Delaware corporation, and its permitted successors and assigns, affiliates, subsidiaries and related entities (collectively, "Business").

R E C I T A L S:

- A. Business is leasing land consisting of a 39.09 acre portion of APN's 421-060-011 and 421-060-010 and a building which will be constructed in two phases ("Phase 1" and "Phase 2", respectively), at 1020 Prosperity Way in Beaumont, California (the "Property"), commonly known as Crossroads Logistic Center, for the purpose of locating and operating its business.
- B. City desires to induce Business and Business agrees to open for business and operate continuously, as provided in this Agreement, a retail point of sale footwear distribution facility and potential factory outlet store on the Property (the "Business"), by providing contingent financial assistance to Business on the terms and subject to the conditions hereinafter set forth.
- C. City has found that the use and operation of the Property proposed by Business: (i) promotes the long-term employment of residents of Beaumont and will significantly contribute to the maintenance, growth, and expansion of the economic base of the City; (ii) constitutes a valid exercise of the police powers of City and serves public purposes in which City has peculiar and unique interests; .
- D. City and Business acknowledge that the lease entered into by Business ("Lease") will commence on or about July 1, 2017, and will have a term of 10 years, with three 5-year extension options. City and Business also acknowledge that Business will have the option to purchase the Property during the term of the Lease.

C O V E N A N T S:

Based upon the foregoing Recitals and for good and valuable consideration, the sufficiency of which is acknowledged by both parties, City and Business hereby agree as follows:

1. Certain Defined Terms. As used in this Agreement, the following terms shall have the meanings hereinafter set forth:

- a. Fiscal Year. "Fiscal Year" shall mean City's fiscal year, which commences on July 1 and ends on June 30. The parties acknowledge that the "Term" (defined in Section 4 below) may include partial Fiscal Years. All Sales Tax dollar thresholds described in Section 3 that are attributable to a partial Fiscal Year within the Term will be fractionally prorated, with

the numerator of such fraction being the number of calendar days within the partial Fiscal Year and the denominator being 365.

- b. Sales Tax. “Sales Tax” means, for each Fiscal Year during the Term, that portion of taxes received by City from the imposition of the Bradley-Burns Uniform Local Sales and Use Tax Law (commencing with Section 7200 of the California Revenue & Taxation Code) related to the operations of Business on the Property, prorated in the first and last Fiscal Years during the term of this Agreement based upon the number of days in such partial Fiscal Years.

For purposes of this Agreement, the term “Sales Tax” shall not include: (i) any portion of taxes received by City from the operation of the Business on the Property that City may be required to pay, transfer, assign, or allocate to any other entity or entities by virtue of any law now or hereafter existing, or by virtue of any agreement entered into between City and any other governmental entity in settlement of all or part of any claim made by such governmental entity against City based on any such law; (ii) the State Board of Equalization’s administrative and processing fee attributable to City’s portion of such taxes (calculated at the same percentage of such taxes as applies city-wide); and (iii) the sum of \$1,000 per Fiscal Year (representing a stipulated payment for City’s estimated Fiscal Yearly direct and indirect costs of administering this Agreement). “Sales Tax” shall not be considered to have been received by City until City is able to confirm receipt of such taxes from the State Board of Equalization, although Sales Tax received by City after the Term that is attributable to Business’ operations during the Term will be attributed to the Fiscal Year in which the relevant operations occurred and City will pay any amount due based on those Sales Tax as if they were received by City during the applicable Fiscal Year of the Term.

If the event described in (i) of the immediately preceding paragraph occurs or if California state law changes during the Term so as to materially alter the method by which Sales Tax revenues are allocated among jurisdictions, then the parties shall negotiate in good faith modifications to this Agreement to carry out its intended economic costs and benefits to each party. If Business determines, in its sole and absolute discretion, that this Agreement cannot be so amended to achieve the same economic benefit to Business, then Business may elect to terminate this Agreement without cost or liability, in accordance with Section 7.c below.

- c. Term. The “Term” of this Agreement is defined in Section 4.
- d. Maximum Assistance. The phrase “Maximum Assistance” means an amount equal to 1.74% of the total (i) direct and indirect cost of the Property, plus (ii) the total direct and indirect cost of construction of Phase 1 and Phase 2, plus (iii) the total direct and indirect cost of installing

fixtures in Phase 1 and Phase 2. Following the date that Phase 1 is constructed and occupied by Business, City and Business will negotiate diligently and in good faith to establish a fixed dollar amount of the Maximum Assistance. Upon completion of construction of Phase 2 and occupancy by Business, City and Business will negotiate diligently and in good faith to establish a fixed dollar amount of the Maximum Assistance for both Phase 1 and Phase 2.

2. Conditions Precedent. Satisfaction (or written waiver) of each of the following on or before December 31, 2018, are conditions to the parties' respective obligations under this Agreement: (i) the delivery to City of a copy of Business' title insurance policy for a portion of the Property showing that Business owns or leases a portion of the Property; and (ii) Business opening for business and operating for at least one day on the Property (subject to delays beyond the control of Business, as set forth in Section 10.(i)).

3. Contingent Payments by City. Subject to the proration provisions described in Section 1.a above, in each Fiscal Year during the Term, City shall retain the first \$100,000 of Sales Tax received during each Fiscal Year and will pay Business an amount equal to the following:

- a. In consideration of Business's compliance with Section 6 below, in each full or partial Fiscal Year, City shall make Fiscal Yearly payments to Business in an amount equal to 50% of the total Sales Tax received by City between \$100,000 and up to \$200,000, during each Fiscal Year.
- b. In consideration of Business's compliance with Section 6 below, in each full or partial Fiscal Year, City shall make Fiscal Yearly payments to Business in an amount equal to 60% of the total Sales Tax received by City in excess \$200,000 and up to \$300,000, during each Fiscal Year.
- c. In consideration of Business's compliance with Section 6, below in each full or partial Fiscal Year, City shall make Fiscal Yearly payments to Business in an amount equal to 70% of the total Sales Tax received by City in excess of \$300,000, during each Fiscal Year.
- d. Example: The total Sales Tax received by City, during a Fiscal Year is \$458,000. City shall retain the first \$100,000 of sales tax proceeds. The \$100,000 in sales tax proceeds representing the proceeds between \$100,000 and \$200,000 are to be split 50/50 between City and Business. The \$100,000 in sales tax proceeds representing the proceeds between \$200,000 and \$300,000 are to be split 40/60 between City and Business. The \$158,000, which represents the sales tax proceeds above \$300,000 are to be split 30/70 between City and Business respectively – *i.e.*, City would retain \$47,400 and Business would be paid \$110,600. The total sales tax proceeds from this example year would result in City retaining \$237,400 and a payment made to Business in the amount of \$220,600.

Sales Tax Received	\$458,000	First \$100,000	\$100,001 to \$200,000	\$200,001 to \$300,000	Above \$300,000
Amount in range	Total for year	\$100,000	\$100,000	\$100,000	\$158,000
City Share	\$237,400	\$100,000	\$50,000	\$40,000	\$47,400
Business Share	\$220,600	0	\$50,000	\$60,000	\$110,600
Percent Payable to City/Business	N/A	100% / 0%	50% / 50%	40% / 60%	30% / 70%

4. Term. The Term of this Agreement shall commence upon execution of this Agreement by City and Business and, unless sooner terminated pursuant to Section 7 herein, shall expire on the earliest of (i) the date that is 25 years after Business opens for business on the Property, (ii) the date Business ceases operations in Beaumont or (iii) the date on which City has made payments under Section 3 above and provided benefits under Section 9 below that, in the aggregate, equal the Maximum Assistance.

5. Payment Procedures.

- a. Within 30 days after the end of each Fiscal Year, or receipt of quarterly sales tax data and payments from the State Board of Equalization, whichever is later, during the Term of this Agreement commencing with the first Fiscal Year in which Business opens for business on the Property, City's Finance Director shall determine from records available to him or her, the amount of Sales Tax, if any, due to be paid to Business related to the operations of Business on the Property during the previous Fiscal Year.
- b. Payment of the amount determined by City's Finance Director to be owing to Business related to operations of Business on the Property during each Fiscal Year during the Term, shall be made by within 15 days after City's Finance Director has made his or her determination.
- c. Business shall have the right to audit City's Finance Director's determination of the amount of the Sales Tax, if any, due to be paid to Business related to operations of Business on the Property during the applicable Fiscal Year.
- d. Under no circumstances shall the City be liable for any payment measured by Sales Tax not actually received and permanently retained by City. If the State Board of Equalization requires repayment, repayment by offset or other recapture of Sales Tax, Business shall repay to City (without interest) the amount of such Sales Tax paid to Business within 60 days of written notice from City containing a calculation of such amount.

6. Covenants and Representations of Business. During the Term of this Agreement, Business hereby covenants and agrees with City that Business shall open for business no later

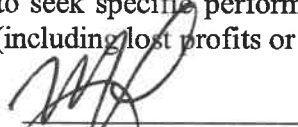
than December 31, 2018 and operate on the Property continuously (subject to delays beyond the control of Business, as set forth in Section 10.(i)).

7. Defaults and Termination.


- a. (i) Failure by City to make a payment or meet any other monetary obligation to Business that is required under this Agreement shall, if not cured within thirty (30) days after written notice from Business to City, constitute a default by City under this Agreement and, at Business' option and as its sole and exclusive remedies, this Agreement shall terminate after such thirty (30) days' notice to City and Business may seek all remedies available to it for the recovery of the unpaid amounts. (ii) With regards to City's failure in the due, prompt, and complete observance or performance of any non-monetary covenant or obligation set forth in this Agreement for a period of thirty (30) days after written notice to City from Business specifying the nature thereof, then, as Business' sole and exclusive remedy, this Agreement shall terminate; provided that City shall not be in default under this subparagraph if the failure to observe or perform the covenant or obligation in question is curable but is of such a nature that it is incapable of being cured with reasonable diligence within that thirty (30) day period and City commences such cure within that thirty (30) day period and diligently and continuously pursues the same to completion.
- b. (i) Failure by Business to make a payment or meet any other monetary obligation to City that is required under this Agreement shall, if not cured within thirty (30) days after written notice from City to Business, constitute a default by Business under this Agreement and, at City's option and as its sole and exclusive remedies, this Agreement shall terminate after such thirty (30) days' notice to Business and City may seek all remedies available to it for the recovery of the unpaid amounts. (ii) With regards to Business' failure in the due, prompt, and complete observance or performance of any non-monetary covenant or obligation set forth in this Agreement for a period of thirty (30) days after written notice to Business from City specifying the nature thereof, then, as City's sole and exclusive remedy, this Agreement shall terminate; provided that Business shall not be in default under this subparagraph if the failure to observe or perform the covenant or obligation in question is curable but is of such a nature that it is incapable of being cured with reasonable diligence within that thirty (30) day period and Business commences such cure within that thirty (30) day period and diligently and continuously pursues the same to completion.
- c. Business' Right to Terminate Upon Certain Events. If (i) the Business or the development on the Property is determined to be subject to the prevailing wage and other requirements of California Labor Code Section 1720 or any similar law, or (ii) this Agreement is determined to be

unlawful or if the distribution of Sales Taxes as provided by this Agreement is determined by any judicial body or regulatory agency to be unlawful or unenforceable for any reason, or (iii) if the City fails for any reason to make the yearly budgetary allocation required to meet its obligations hereunder as described in Section 10.n, or (iv) if Business is required to return any funds to City under Section 5.d, or (v) Business determines, in its sole and absolute discretion, to cease or reduce operations on the Property, then Business may elect, in its sole discretion, to terminate this Agreement, in whole or in part, without cost, expense, or liability, except for any obligations fully accrued and liquidated prior to Business' termination.

8. Limited Remedies. Except for those remedies provided in Section 7 and Section 10.k, City and Business each waive and release to the greatest legal extent any other right or remedy that it may have at law or in equity upon the breach or default of the other party, including the right to seek specific performance, injunctive relief, consequential damages, and incidental damages (including lost profits or Sales Taxes).



City Initials



Business Initials

9. Fee Waivers and Reductions. City agrees to waive all Planning, Building and Safety and Fire inspection fees related to development or operation of the Property. In addition, City agrees to waive all Planning application fees related to development or operation of the Property. In addition, City agrees to a 50% reduction of all Public Works and Building and Safety plan check fees, including material handling equipment (MHE) plan check fees, related to development or operation of the Property. Finally, City agrees to a 50% reduction in all Building permits and Public Works inspections fees related to development or operation of the Property.

10. General Provisions.

- a. Entire Agreement. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof, and supersedes all prior agreements and understandings of the parties with respect to the subject matter hereof. This Agreement may not be modified, amended, supplemented, or otherwise changed, except by a writing executed by both parties.
- b. Waiver. No failure or delay by any party in the exercise of any right hereunder shall constitute a waiver thereof, nor shall any single or partial exercise of any such right preclude other or further exercise thereof, or any other right.
- c. Captions. Section headings used in this Agreement are for convenience of reference only and shall not affect the construction of any provisions of this Agreement.

- d. Assignment. Business may, in its sole and absolute discretion, assign this Agreement to any entity that, directly or indirectly controls, is under common control with or is controlled by Business, provided that upon any such assignment, the successor entity assumes all of the rights and obligations of Business under this Agreement and written notice of the assignment is provided to City within a reasonable time after the assignment. Otherwise, Business may not assign this Agreement without City's consent, which may be given or withheld in City's reasonable discretion.
- e. Calculation of Time. Except as may otherwise be provided in this Agreement, wherever this Agreement states a period of time and number of days, it shall be construed to mean calendar days; provided, however, that when any period of time so stated would end upon a Saturday, Sunday, or legal holiday, such period shall be construed to end upon the next day following which is not a Saturday, Sunday or legal holiday.
- f. Counterparts. This Agreement may be executed in two or more counterparts and by different parties hereto on separate counterparts, each of which when so executed and delivered shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument.
- g. Governing Law. This Agreement shall be deemed to be a contract made under the laws of the State of California and for all purposes shall be governed by and construed in accordance with the laws of the State of California, excluding its choice of law rules.
- h. Authority. Each individual executing this Agreement on behalf of Business represents and warrants that he/she is duly authorized to execute and deliver this Agreement on behalf of Business.
- i. Inability to Perform. Except as may be otherwise provided herein, performance by any party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended, where the party seeking the extension has acted diligently and delays or defaults are due to events beyond the reasonable control of the party (financial inability excepted) such as but not limited to war; insurrection; acts of terrorism; riots; floods; earthquakes; fires; casualties; acts of nature; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions; litigation that directly prevents performance by Business or City; catastrophic loss or destruction of the Property; weather; and other causes beyond the reasonable control or without the fault of the party claiming an extension of time to perform that are not excluded above (collectively, "Enforced Delays"). Notwithstanding anything to the contrary in this Agreement, an extension of time for any such cause shall be for the period of time reasonable in

light of the Enforced Delay and shall commence to run from the time of the commencement of the cause. Any party claiming a delay under this paragraph shall provide written notice to the other party of the occurrence within 30 days of the occurrence along with an estimate of the resulting delay.

- j. Notices. Notices given or to be given by City or Business to the other party hereunder may be personally served, may be served by certified return-receipt mail or may be served by overnight mail delivery service hosted by a recognized carrier and addressed to the appropriate address hereinafter set forth or to such other address as such party may hereafter designate by written notice. If served by certified mail, service will be considered completed and binding on the party served on the date set forth in the certification receipt. If served by overnight mail delivery service or personal service, service will be considered completed and binding on the party served on the date of delivery.

To City: City of Beaumont
550 E 6th Street
Beaumont, CA 92223
Attn: City Manager

To Business: Wolverine Worldwide
9341 Courtland Drive NE
Rockford, MI 49351
Attn: General Counsel

- k. Attorneys' Fees and Costs. If a dispute arises under or in connection with this Agreement that results in an arbitration (including, without limitation, the enforcement or interpretation of this Agreement) or litigation, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs incurred in such arbitration or litigation from the other party.
- l. Ownership; Authority. The persons and entities executing this Agreement on behalf of Business represent and warrant that Business has duly authorized this Agreement, that they are duly authorized to execute this Agreement on behalf of Business, and that they have provided a copy of this Agreement to each owner (whether a person or a business entity) of an interest in Business.
- m. Successors and Assigns. The obligations of the parties hereunder shall bind their successors-in-interest and their successors and assigns.
- n. Change in Location of the Property. In the event that Business is unable for any reason to lease the Property by December 31, 2016, then this Agreement shall terminate and neither party shall have any rights or obligations under this Agreement.

- o. City Appropriation. City and Business acknowledge that City adopts a budget related to its operations during each Fiscal Year (“Budget”) and that within each Budget, City appropriates funds sufficient to operate City during such Fiscal Year. Regarding each such Budget, City shall exercise diligent good-faith efforts, subject to its obligations under applicable law, to appropriate into the Budget, funds sufficient to pay the estimated amount of payments due Business under this Agreement, during the applicable Fiscal Year. In the event that, after exercising diligent good-faith efforts, City fails to appropriate such amount into the applicable Budget, then, at Business’ sole option, Business may either terminate this Agreement in accordance with Section 7.c above or City’s and Business’ respective rights and obligations under this Agreement shall be suspended throughout the applicable Fiscal Year (“Suspension Period”) and the Term shall be extended by an amount of time equal to the Suspension Period.
- p. Indemnity. Business shall defend (with counsel reasonably acceptable to City), indemnify and hold City and its councilpersons, officers, agents and employees (collectively, the “Indemnified Parties”) harmless from and against all losses, costs and expenses (including, without limitation, reasonable attorneys’ fees and costs), damages (including, without limitation, consequential damages), claims and liabilities to third parties arising from the evaluation, approval, entering into and carrying out of the terms and provisions of this Agreement including, but not limited to a challenge to this Agreement or the transactions contemplated by this Agreement except to the extent caused by the negligence or malfeasance of City.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first above written.

[SIGNATURES FOLLOW]

“BUSINESS”:

WOLVERINE DISTRIBUTION, INC.,
a Delaware corporation

By:  _____

“CITY”:

CITY OF BEAUMONT,
a municipal corporation

By:  _____
Mayor

ATTEST:



City Clerk

APPROVED AS TO FORM:

By:  _____
City Attorney

February 3, 2017

HAND DELIVERED

Ms. Nicole Wheelwright
Deputy City Clerk
City of Beaumont
550 East 6th Street
Beaumont, California 92223

Re: Wolverine Distribution Center located in Beaumont, California

Dear Ms. Wheelwright:

Enclosed is a fully signed original of the Sales Tax Participation Agreement between the City of Beaumont and Wolverine Distribution, Inc. As information, this Agreement was approved by the City Council at its May 17, 2016 meeting.

Very truly yours,



Mark A. Ostoich, of
GRESHAM SAVAGE
NOLAN & TILDEN,
A Professional Corporation

MAO/pmj
Enclosure