

FIRST AMENDMED TAX ABATEMENT AGREEMENT BETWEEN THE CITY OF SEGUIN, VME, LLC AND UNITED ALLOY TEXAS, LLC

This First Amended Tax Abatement Agreement (the "Agreement") is made and entered into by and between the City of Seguin ("City"), VME, LLC, a Texas limited liability company ("VME"), and United Alloy Texas, LLC, a Texas limited liability company ("UAT"), and is effective as of the date of the last required signature hereto. Hereinafter, VME and UAT may be individually referred to herein as "Owner" and collectively referred to as the "Owners." Owners and the City may be referred to herein individually as a "Party" and collectively as "Parties".

WHEREAS, the Parties previously entered into a tax abatement agreement (the "Original Agreement") to incentivize Owners for the construction and operation of a new production facility in Seguin, said Original Agreement attached hereto as Exhibit A; and

WHEREAS, the Owner has complied with certain obligations under the Original Agreement; and

WHEREAS, due to impacts from COVID-19 and the resulting pandemic, Owners can no longer to commit to the original construction deadlines for Phase 2 and Phase 3 of the additional capital investment/facility expansion performance obligations outlined in Section 4.g of the Original Agreement; and

WHEREAS, Owners are willing to commit to the required total Capital Investment, and Employment and Payroll Commitment of the Original Agreement; and

WHEREAS, the Owners have requested an amendment to the Original Agreement revising their obligations related to building of a new facility in Seguin, on land which is currently owned by the Owners and more particularly described as a 27.28-acre tract of land situated in the Humphries Branch, Survey No. 17, Abstract 6, City of Seguin, Guadalupe County, Texas, as depicted on Exhibit "A" (the "Property"); and

WHEREAS, the CITY agrees to an amendment to the Original Agreement as requested by Owners; and

NOW THEREFORE, in consideration of the foregoing and the mutual promises and covenants herein, the undersigned parties agree as follows:

1. PARTIES

This Tax Abatement Agreement ("Agreement") is made and entered into between the City of Seguin ("City"), VME, LLC ("VME"), and United Alloy Texas,

LLC ("UAT"). Hereinafter, VME and UAT are collectively referred to as the "Owners."

2. AUTHORIZATION AND FINDINGS

a. This Agreement is entered into pursuant to the following:

- (i) Texas Tax Code Chapter 312.
- (ii) City Ordinance No. 2019-074, designating the Real and Personal Property as within Seguin Reinvestment Zone #5.
- (iii) City Resolution No. 2018-397, establishing guidelines and criteria for tax abatements.
- (iv) This Agreement was approved by Resolution 2019R-160, passed on December 3, 2019, by the City Council of Seguin, Texas.

b. The City, by approval of this Agreement, hereby finds the terms of this Agreement and the property subject to it, to meet the "Guidelines and Criteria" as adopted, and further finds that (a) there will be no long-term adverse effect on the provision of City services of tax base; and (b) the planned use of the property will not constitute a hazard to public safety, health, or morals.

3. PROPERTY

a. The real and tangible personal property subject to this Agreement includes:

- (i) Real property consisting of a 27.28-acre tract of land situated in the Humphries Branch, Survey No. 17, Abstract 6, City of Seguin, Guadalupe County, Texas, as depicted on Exhibit "A" (the "Real Property");
- (ii) All manufacturing equipment brought onto the Property (the "Personal Property"); and
- (iii) Any real property improvements to the Property.

b. Abatements approved will be based on the rolls of the Guadalupe County Appraisal District for each year of the abatement period.

4. OWNERS' REPRESENTATIONS

- a. Owners represent that, to the best of its knowledge, the property subject to this Agreement will be located wholly within a duly designated reinvestment zone.
- b. VME represents that VME is the owner of the Real Property.
- c. Owners represent that UAT and/or VME is or will be the owner of the Personal Property.
- d. Owners represent that they have complied with the required application procedures as adopted by the Seguin City Council.
- e. Owners represent that the Real Property and Personal Property constitutes an investment of approximately THIRTY-FIVE MILLION DOLLARS (\$35,000,000.00) and that the reinvestment set forth herein constitutes a “capital intense” investment pursuant to the City Tax Abatement Guidelines and Criteria.
- f. Owners represent that the investment set forth herein will serve to create at least ONE HUNDRED (100) new jobs within the City.
- g. Owners represent that the reinvestment set forth herein, consisting of the purchase and installation of the Real Property and Personal Property will be completed in accordance with the following schedule:
 - (i) Phase 1 Capital Investment. The Parties agree that Phase 1 of the Original Agreement has been met. Phase 1 represented a total Capital Investment of at least \$18,000,000.
 - (ii) Phase 2 Capital Investment. The Owners commit to a minimum capital investment of \$18,000,000 in the expansion of the Facility (Phase 2). Phase 2 total minimum capital investment represents a minimum \$9,000,000, 100,000 square foot expansion of the Facility, and an additional minimum \$9,000,000 in new machinery and equipment.
 - (iii) Construction Deadlines. Phase 2 shall be completed By December 31, 2023, the Owners will complete construction of the 100,000 square foot expansion of the Facility. The 100,000 square foot expansion will bring the Owners’ total building footprint to at least

200,000 square feet. Completion of Phase to shall be evidenced by the receipt of a temporary or final Certificate of Occupancy.

5. TERMS OF THE AGREEMENT

- a. Owners agree to purchase and install the Real Property and Personal Property under the schedule set forth in Section 4, above.
- b. UAT agrees to create ONE HUNDRED (100) new jobs within the City with TWENTY (20) jobs being created by December 31, 2020 and increasing by 20 jobs per year during the term of this Agreement.
- c. Owners agree to remain current in ad valorem tax payments to all local taxing entities during the abatement period.
- d. Owners agree to maintain the Real Property and Personal Property in good repair during the abatement period.
- e. Owners agree to furnish the Chief Appraiser of Guadalupe County Appraisal District with such information as may be necessary for the abatement and for appraisal purposes.
- f. Owners agree to provide access to and inspection of the Real Property and Personal Property by City agents to ensure that improvements are made in accordance with the requirements and conditions of this Agreement. The City is required to give the Owners reasonable notice of all inspections conducted pursuant to this Agreement and such inspections shall be conducted with a representative of the Owners so as not to interfere with or interrupt the operation of the Facility.
- g. Owners agree to remain a City utility customer (water and sewer) and remain current in their City utility payments for the period of the abatement.
- h. Owners agree that the use of the property subject to this Agreement shall be limited to those uses consistent with the general purpose of encouraging redevelopment of the Facility during the period that this Agreement is in effect.

- i. Owners agree to annually certify in writing their compliance with the terms of this Agreement, which certification shall be filed with the City by February 1st of each year during the term of the abatement, and February 1st of the year following the term of the abatement.
- j. Failure to abide by the terms of this Agreement may result in the early termination of this Agreement and the abatement established herein.

6. TAX ABATEMENT

- a. Provided that the Owners comply with the terms of this Agreement throughout the five-year abatement period, the percentage of the entire assessed value of the Real Property and Personal Property listed in Section 3(a) of this Agreement (including additions made as part of phase 2) that is exempt from the City ad valorem taxes is as follows:
 - Year 1: 60%
 - Year 2: 50%
 - Year 3: 40%
 - Year 4: 30%
 - Year 5: 30%
- b. The period of abatement will be five (5) years, commencing on January 1, 2021 (the “Commencement Date”), and expiring after the fifth anniversary of the Commencement Date (January 1, 2026).

7. DEFAULT AND RECAPTURE

a. Default, Termination, and Recapture of Tax Savings

- (i) If the Owners refuse or neglect to comply with any of the terms of this Agreement, or if any representation made by the Owners in the tax abatement application is false or misleading in any material respect when made, this Agreement shall be in default.
- (ii) If the City determines that the Owners are in default, the City will notify the Owners in writing at the address stated in Section 8 of this Agreement.
- (iii) If default occurs the Owners shall forgo any tax benefit under this Agreement during the year the default occurs. If Owners cure the default following notice by City, Owners shall not be liable to repay prior year tax savings and shall be entitled to the benefits under this Agreement for any future year in which Owners are not in default.

(iv) If a default is not cured within sixty (60) days from the date of such notice, this Agreement may be terminated by the City. The City may recapture up to 100 percent of the tax savings received by the Owners prior to the date of termination.

b. Recapture in Event of Closure, Relocation, or Discontinuation of Operations

(i) If during the abatement period established by this Agreement UAT discontinues, closes, or relocates its operations in Seguin, Texas then this Agreement shall immediately terminate, and the City may recapture up to 100 percent of the tax savings received by the Owners prior to the date of termination.

(ii) For purpose of this section, the following definitions shall apply”

- **“Business Activities”** means the business operations of UAT, its affiliates, and lessees at the Facility, not limited to, the assembly, manufacturing, storage, distribution of products.
- **“Closure”** means the permanent cessation of all Business Activities at the Facility, with no foreseeable or anticipated commencement of Business Activities.
- **“Discontinuation of Activities”** means the temporary cessation of all Business Activities at the site for a continuous period of six (6) months or more during the term of this Agreement, subject to Force Majeure, as defined in Section 7(d) of this Agreement.
- **“Relocation”** means the complete movement, transfer, or establishment of a new location for all of the Business Activities outside of current corporate city limits and reinvestment zone.

c. Process for Recapture of Tax Savings. A bill for recaptured taxes will be sent to the Owners, and the Owners agree to pay the total amount within sixty (60) days of receipt. Interest at the rate of six percent (6%) per annum on unpaid amounts will begin to accrue on all amounts that remain unpaid following sixty (60) days after receipt of the bill.

- d. **Force Majeure.** Owners shall not be deemed to be in default or otherwise responsible for delays or failures in performance resulting from acts of God; acts of war or civil disturbance; fires; earthquakes; unavailability of materials, power or communication; or other causes beyond Owners' reasonable control.

8. NOTICES

All notices shall be in writing and addressed to the Owners or City at the following addresses. If mailed, any notice or communication shall be deemed to be received three (3) days after the date of deposit in the United States Mail, certified mail, return receipt requested, postage prepaid and properly packaged for delivery. Unless otherwise provided in this Agreement, all notices shall be delivered to the following addresses:

To **Owners**, via mail or personal delivery:

United Alloy, Inc.
Attention: Thomas R. Baer
4100 Kennedy Road
Janesville, Wisconsin 53545

With a copy to:

Duffy Dillon
Duffy Dillon Law Office LLC
466 Midland Court
Janesville, WI 53546

To **City**, via mail or personal delivery:

City Manager
City of Seguin
205 N. River Street
Seguin, Texas 78155

9. ENTIRE AGREEMENT; AMENDMENT

This Agreement supersedes any prior agreements, negotiations and communications, oral or written, if any, and contains the entire agreement between the Owners and the City as to the matters addressed herein. No subsequent agreement, representation or promise made by any party hereto,

or by or to an officer, director, employee or representative of any such party, shall be of any effect unless it is in writing and executed by the party to be bound thereby. The terms of this Agreement may not be modified or amended except by an instrument executed in writing by each of the parties hereto. Notwithstanding the foregoing, this Agreement shall not affect the terms and conditions of any water or wastewater service agreement, specific use permit, or other agreement of the parties referenced herein and existing on the Effective Date of this Agreement.

10. AGREEMENT APPROVED BY CITY COUNCIL

The City represents that this Agreement has been approved by affirmative vote of a majority of the members of the Seguin City Council at a regularly scheduled meeting.

11. ASSIGNMENT

This Agreement may be assignable to a new owner only with the approval of the Seguin City Council as reflected in a duly adopted City Resolution or Ordinance. However, this Agreement shall continue to apply to any successor of the Owners due to corporate restructuring, including but not limited to absorption into the corporate parent or a brother/sister corporation.

12. SEVERABILITY

In the event any section, subsection, paragraph, subparagraph, sentence, phrase or word herein is held invalid, illegal, or unenforceable, the balance of the Agreement shall stand, shall be enforceable, and shall be read as if the parties intended at all time to delete said invalid section, subsection, paragraph, subparagraph, sentence, phrase or word.

13. COUNTERPARTS

This Agreement may be signed in one or more counterparts, and each counterpart will be considered an original Agreement. Any counterpart may be executed and delivered by facsimile or other electronic signature (including portable document format) by any of the parties and any receiving party may rely on the receipt of such document so executed and delivered electronically or by facsimile as if the original had been received. All counterparts will be considered one document and become a binding agreement when one or more counterparts have been signed by each of the parties and delivered to the other.

14. DATE

This Agreement has been executed by the parties in multiple originals, each having full force and effect on the Commencement Date of the abatement period.

15. ORIGINAL AGREEMENT TERMINATED

By execution of this Agreement the Parties specifically terminate the Original Agreement.

United Alloy Texas, LLC:

By: _____

Printed Name: Thomas R. Baer

Title: Manager, United Alloy Texas LLC

VME, LLC:

By: _____

Printed Name: Thomas R. Baer

Title: Manager, VME, LLC

City of Seguin:

By: _____

Steve Parker

City Manager

Form Approved: _____

Andrew Quittner

City Attorney