APPROVED BY ORANGE
COUNTY BOARD OF COUNTY
COMMISSIONERS

BCC Mtg. Date: January 24, 2017

ECONOMIC DEVELOPMENT AD VALOREM TAX EXEMPTION AGREEMENT

KPMG LLP

7675 Lake Nona Blvd., Orlando, FL 32827

THIS AGREEMENT is made as of the _____day of JAN 24 2017, 2017 (the "Effective Date"), by and between Orange County, a political subdivision of the State of Florida ("County") and KPMG LLP, a Delaware registered limited liability partnership ("Company"). The foregoing entities individually may be referred to as a "Party" or collectively as the "Parties."

WITNESSETH:

WHEREAS, Article VII, Section 3, of the Florida Constitution, and Section 196.1995, Florida Statutes, authorize the granting of economic development ad valorem tax exemptions to qualifying new businesses and expansions of qualifying existing businesses upon the successful passage of a referendum; and

WHEREAS, the electors of Orange County have authorized the granting of such exemptions by the successful passage of a referendum held on January 31, 2012; and

WHEREAS, subsequent to the passage of such referendum, on February 2, 2012, the Board of County Commissioners of Orange County (the "Board") enacted Ordinance No. 2012-05, the "Orange County Economic Development Ad Valorem Tax Exemption Ordinance" (the "Program Ordinance") to establish a program (the "Program") for granting such exemptions from certain ad valorem taxation for certain new businesses and expansions of existing businesses, and to provide procedures and guidelines for the submission of applications for the Board's consideration of granting such exemptions; and

WHEREAS, the Company submitted an application for such an exemption under the Program for an Expansion of an Existing Business to be located at 7675 Lake Nona Boulevard, Orlando, Florida 32827 ("Expanding Business"); and

WHEREAS, all affected and interested agencies reviewed said application, and provided comments on the granting of such an exemption; and

WHEREAS, all requirements of state law and the Program Ordinance were satisfied with respect to the granting of such an exemption; and

WHEREAS, on the date of this Agreement, the Board enacted an Ordinance, the (the "Exemption Ordinance") which granted an exemption from certain ad valorem taxation for the Company's Expansion of an Existing Business under the Program, as more specifically set forth in the Exemption Ordinance; and

WHEREAS, pursuant to the Program Ordinance and the Exemption Ordinance, as a condition to receiving the Exemption, the Company is required to, among other things, enter into an agreement with the County to ensure that the Company satisfies all requirements associated with the granting and continuation of the Exemption for the Expansion of the Existing Business, as well as any policies and procedures related to the Program as may be adopted from time to time; and

WHEREAS, the County and the Company desire to enter into this Agreement to satisfy the referenced requirement.

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

Section 1. Recitals. The foregoing recitals are true and correct and are incorporated herein by this reference.

Section 2. Incorporation of Ordinances. The Program Ordinance and Exemption Ordinance, copies of which are attached hereto as **Exhibit "A,"** are incorporated herein by this reference.

Section 3. Definitions. All terms used in this Agreement in capitalized form, unless otherwise defined in this Agreement, shall have the same meanings as ascribed to them in the Program Ordinance and Exemption Ordinance.

Section 4. Term of Agreement. The term of this Agreement shall commence on the Effective Date and shall remain in effect until the later of December 31st of the seventh (7th) tax year after January 1st of the year in which the Improvements made by or for the use of the Company's Expansion of an Existing Business and/or the Tangible Personal Property of such Expansion of an Existing Business first appear on the Orange County ad valorem tax assessment rolls, or the date on which all of the obligations of the Parties provided for in this Agreement have been satisfied.

Section 5. Exemption. The Company has been granted an Exemption on the assessed value of Improvements made by or for the use of the Company's Expansion of an Existing Business located at 7675 Lake Nona Boulevard, Orlando, Florida 32827, and of all Tangible Personal Property of such Expansion of an Existing Business, provided that the Improvements are made or the Tangible Personal Property is added or increased on or after January 1, 2017. For purposes of this Agreement, the terms "Improvements" and "Tangible Personal Property" shall include only those improvements and tangible personal property pertaining to the construction of the Company's new training center facility. Subject to the limitations provided for in the Program Ordinance, the Exemption so granted shall remain in effect for a period of seven (7) tax years commencing on January 1st of the year in which the Improvements made by or for the use of the Company's Expansion of an Existing Business and/or the Tangible Personal Property of such Expansion of an Existing Business first appear on the Orange County ad valorem tax assessment rolls, and expiring on December 31st of the seventh (7th) tax year thereafter. The Exemption shall apply only to taxes levied by the County. The Exemption shall not apply to taxes or assessments levied by a municipality, municipal service benefit or taxing unit, school district, or water management district, or to taxes levied for the payment of bonds or taxes authorized by a vote of the electors pursuant to Section 9(b) or 12, Article VII of the Florida Constitution.

Section 6. Conditions Precedent. The Company's ability to receive the Exemption for the period granted is conditioned upon the Company's continued compliance with the requirements of the Program Ordinance, and any amendments thereto, throughout the seven (7) year Exemption period, including, but not limited to:

A. The Company locating its business to 7675 Lake Nona Boulevard, Orlando, Florida 32827 as described in the Company's Application;

B. The Company maintaining at the site of the Expansion of an Existing Business at least eighty (80) Full-Time Equivalent Employees with Average Annual Wages of at least one hundred fifty percent (150%) of the Average Annual Wage in the County at the time of application;

C. The Company's submission of an annual renewal statement certifying that the information provided in the original application has not changed and an annual report to the Administrator on or before March 1st of each year reporting on the status of the Expansion of an Existing Business, evidencing continued performance of the conditions set forth in the application and containing such other information as shall be deemed necessary by the Property Appraiser and the Administrator for determining such continuing performance including the forms listed in Section 7 below;

D. The County Administrator may authorize one (1) 30-day extension to the section 6(c) March 1st deadline above upon receiving written request from KPMG at least three (3) business days before March 1st.

E. Compliance by the Company with the terms of this Agreement;

F. Compliance by the Company with any policies and procedures related to the Program as may be adopted from time to time. The County will provide written notice of any adopted change within 30 days of same;

G. Compliance by the Company with federal, state, or local laws and regulations as they pertain to this Agreement;

H. Compliance by the Company with all filings required pursuant to Section 196.011, Florida Statutes (including the annual filing of an application for an Exemption with the Orange County Property Appraiser);

Section 7. Performance Monitoring and Annual Report.

A. <u>Job Performance</u>. Each Annual Report submitted by the Company to the County must include a then current Florida New Hire Form, Florida Department of Revenue UCT 6 Form, a Federal Employment Tax Form 941, the Company's HR Report, and such other information with respect to the Expansion of an Existing Business as the County deems necessary to verify that the Company is maintaining the required number of Full-Time Equivalent Employees at the required amount of Average Annual Wages.

B. <u>Maintenance and Review of Records</u>. The Company shall maintain adequate records and accounts, including but not limited to, property, personnel, operations and financial records and supporting documentation as they pertain to the Exemption, the Expansion of the Existing Business, and this Agreement for a period of three (3) years from the expiration of the term of this Agreement (the "Audit Period"). The County shall have the right, and the Company and its subcontractors, as applicable will permit the County to examine all such records, accounts and documentation and to make copies thereof, and excerpts or transcriptions therefrom and to audit all contracts, invoices, materials, accounts and records relating to all matters covered by this Agreement, including but not limited to, personnel and employment records for the Audit Period. The County will provide notice of examination within five (5) business days. All such records, accounts and documentation shall be made available to the County for audit, examination or copying purposes at any time during normal business hours and as often as the County may deem necessary during the Audit Period. The County's right to examine, copy and audit shall pertain likewise to any audits made by any other agency, whether local, State or federal. The Company shall insure that any subcontractor providing any services associated with this Agreement shall recognize the County's right to examine, inspect and audit its records, accounts and documentation in connection with such services. If an audit is begun by the County or other agency, whether local, State or federal, during the Audit Period, but is not completed by the end of the Audit Period, the Audit Period shall be extended until audit findings are issued. This Article shall survive the expiration or earlier termination of this Agreement.

Section 8. Events of Default; Remedies.

A. Events of Default.

Each of the following shall constitute an event of default ("Event of Default") on the part of the Company:

1. The failure of the Company to comply with each of the terms, covenants, conditions, obligations or provisions of this Agreement;

2. Fraud or material misrepresentation by the Company with respect to the Application, any term or condition of this Agreement or the Program.

B. Remedies

1. In the event of the occurrence of an Event of Default, the County shall be entitled to pursue all rights and remedies available under the Program

Ordinance and the right to terminate this Agreement as provided for in Section 9 of this Agreement. In the event the County, at the discretion of the Board, exercises its contractual right of termination, the County shall be entitled to recover immediately upon demand from the Company an amount equal to all taxes not paid by the Company as a result of the Exemption as provided in the Program Ordinance and the Exemption Ordinance. The County shall provide reasonable written notice to the Company and an opportunity to cure any deficiency that forms the basis for termination pursuant to this Section 8.

2. The Parties agree that the County shall have the specific rights and remedies set forth in this Agreement. Such rights and remedies are in addition to and cumulative with any and all other rights or remedies, now or hereafter available to the County at law or in equity in order to enforce the provisions of this Agreement. The exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy nor shall any such delay or omission be construed to be a waiver of or acquiescence to any Event of Default. The exercise of any such right or remedy by the County shall not release the Company from its obligations or any liability under this Agreement, except as expressly provided for in this Agreement or as necessary to avoid duplicative recovery from or payments by the Company.

Section 9. Termination. Upon the occurrence of an Event of Default, the County shall have the right to terminate this Agreement, and, in such case, upon receipt by the County from the Company of the payment of an amount equal to all taxes not paid by the Company on Tangible Personal Property as a result of the Exemption, the Parties shall have no further rights or obligations under this Agreement.

Section 10. Liability and Indemnification. By entering into this Agreement the County does not assume any liability for the acts or omissions or negligence of the Company, its agents, servants or employees; nor will the Company exclude liability for its own acts or omission or negligence to the County. Moreover, the County neither waives any defense of sovereign immunity nor increases the limits of its liability by entering into this Agreement. The Company shall defend, indemnify and hold harmless the County, from and against any and all losses, liabilities, costs, expenses, damages, claims, demands, actions, suits, judgments and other obligations, including without limitation, attorneys' fees, expenses and court costs at the trial and all appellate levels, arising from or as a result of personal injury, or property damage resulting from the acts or omissions of the Company or from any of the Company's activities as described in or performed under this Agreement.

Section 11. Non-Discrimination. The Company will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, handicap or marital status. The Company will take affirmative action to ensure equal opportunity in recruitment advertising, and that employees are treated during employment (employment, upgrading, demotion or transfer; layoff or termination; rate of pay or other forms of compensation; and selection for training), without regard to their race, color, religion, sex, national origin, age, handicap or marital status.

Section 12. Assignment. Neither Party may assign or otherwise transfer its rights, duties or obligations under this Agreement, in whole or in part, without the prior written consent of the other Party, which consent will not be unreasonably withheld.

Section 13. Waiver. A waiver of any performance or default by either Party shall not be construed to be a continuing waiver of other defaults or non-performance of the same provision or operate as a waiver of any subsequent default or non-performance of the terms, covenants and conditions of this Agreement.

Section 14. Compliance With Laws. Each Party shall comply with all applicable federal, state and local laws, rules, regulations and guidelines, relative to the performance of this Agreement.

Section 15. Independent Contractor. Nothing in this Agreement shall be construed to create a relationship of employer and employee, or principle and agent, partnership, joint venture, or any other relationship between the Parties other than that of independent parties contracting with each other solely for the purpose of carrying out the provisions of this Agreement.

Section 16. Governing Law; Venue. This Agreement shall be construed in accordance with and be governed for all purposes by the laws of the State of Florida applicable to contracts executed and to be wholly performed within such state. Venue for any proceeding pertaining to this Agreement shall be in Orange County, Florida.

Section 17. Severability. If any covenant, condition, provision, term or agreement of this Agreement shall, to any extent, be held invalid or unenforceable by any court of competent jurisdiction, the remaining covenants, conditions, provisions, terms and agreements of this Agreement shall not be affected thereby, but each covenant, condition, provision, term or agreement of this Agreement shall be valid and enforced to the fullest extent permitted by law.

Section 18. Headings. Article headings have been included in this Agreement solely for the purpose of convenience and shall not affect the interpretation of any of the terms of this Agreement.

Section 19. Notice. All notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed properly given when received if sent by personal delivery, or by certified United States Mail, postage prepaid, return receipt requested, addressed as follows:

To the County:

Orange County Administrator
P.O. Box 1393
Orlando, Florida 32802

With copy to:

Economic Development Administrator
P.O. Box 1393
201 S. Rosalind Avenue, 5th Floor
Orlando, Florida 32802-1393

To the Company:

Christopher J. Datino
KPMG LLP
3 Chestnut Ridge Road, Building 1-2
Montvale, NJ 07645-0435

Each Party may by written notice to the other specify a different address for subsequent notice purposes. Notice shall be deemed effective on the date of actual receipt or three (3) days after the date of mailing whichever is earlier.

Section 20. Counterparts. This Agreement may be executed by the Parties in any number of separate identical counterparts, no one of which need be signed by both of the Parties so long as each of the Parties has signed at least one such identical counterpart. Each such identical counterpart, when signed and delivered by one or both of the Parties, shall constitute an original instrument and all such counterparts shall constitute one and the same instrument.

Section 21. Amendments. This Agreement may be amended only by written instrument upon mutual consent of both Parties.

Section 22. Land Development Regulations. Notwithstanding anything contained in this Agreement to the contrary, the County does not, by this Agreement, abrogate any right it may have to grant or deny any particular land development regulatory approval, zoning classification or any applicable permit or approval.

Section 23. Survivability. Any term, condition, covenant or obligation which requires performance by either Party subsequent to termination of this Agreement shall remain enforceable against such Party subsequent to such termination.

Section 24. No Third Party Beneficiary. This Agreement is for the benefit of the Parties, and no right or cause of action shall accrue upon or by reason hereof to or for the benefit of any third party. Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon or give any person, corporation or governmental entity or agencies, other than the Parties, any right, remedy or claim under or by reason of this Agreement or any provisions or conditions hereof.

Section 25. Representations and Warranties. Each Party hereby represents and warrants to the other that it has all the requisite power, authority and authorization to enter into this Agreement, has taken all necessary actions required to enter into this Agreement, and to fulfill any and all of its obligations, duties and responsibilities provided for or required of it by this Agreement, whether exercised individually or collectively.

Section 26. Entire Agreement. The foregoing terms and conditions constitute the entire agreement between the Parties and any representation not contained herein shall be null and void and of no force and effect.

IN WITNESS WHEREOF, the County and the Company have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: ______________________
Teresa Jacobs,
Orange County Mayor

BOARD OF COUNTY COMMISSIONERS · ORANGE COUNTY FLORIDA ·

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

By: ______________________
for Deputy Clerk

KPMG LLP

By: JEC
Printed Name: JOHN E COLE
Title: PARTNER

STATE OF ~~FLORIDA~~ NEW JERSEY
COUNTY OF Bergen

The foregoing instrument was acknowledged before me this 18th day of January, 2017, by John Cole (printed name), as Partner of KPMG LLP, a Delaware registered limited liability partnership, on behalf of the corporation. He/she is personally known to me or has produced ____________ as identification.

Diane Pugliese
Notary Public

Name typed, printed or stamped:
DIANE PUGLIESE
NOTARY PUBLIC
STATE OF NEW JERSEY
MY COMMISSION EXPIRES JULY 17, 2020

My Commission Expires; July 17, 2020

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