



**NOTICE OF REGULAR MEETING AGENDA
LANCASTER CITY COUNCIL
MUNICIPAL CENTER CITY COUNCIL CHAMBERS
211 N. HENRY STREET, LANCASTER, TEXAS**

Monday, November 12, 2012 - 7:00 PM

CALL TO ORDER

INVOCATION: Ministerial Alliance

PLEDGE OF ALLEGIANCE: Mayor Marcus E. Knight

RECOGNITION: Boy Scouts Troop 279

PROCLAMATION: America Recycles Day

PRESENTATION: Civic Leadership Graduation

CITIZENS' COMMENTS:

At this time citizens who have pre-registered before the call to order will be allowed to speak on any matter other than personnel matters or matters under litigation, for a length of time not to exceed three minutes. No Council action or discussion may take place on a matter until such matter has been placed on an agenda and posted in accordance with law.

CONSENT AGENDA:

Items listed under the consent agenda are considered routine and are generally enacted in one motion. The exception to this rule is that a Council Member may request one or more items to be removed from the consent agenda for separate discussion and action.

- C1. Consider approval of minutes from the City Council Regular Meeting held October 22, 2012.
- C2. Consider a resolution approving the terms and conditions of a lease agreement for copiers through an Interlocal Agreement with Texas Cooperative Purchasing Network (TCPN) (Contract R5008).
- C3. Consider a resolution approving Amendment 4 to the meal services contract, [bid #09-004] with The Paper Plate in an amount not to exceed \$4.25 per meal for senior services.

ACTION:

- 4. Consider a resolution approving an amendment to the Economic Development Incentive Agreement by and between the City of Lancaster, LEDC and Argent-ProLogis, LLC and authorizing the City Manager to execute said amendment.

5. Consider a resolution ratifying the actions of the Board of Directors of the Lancaster Economic Development Corporation approving an Incentive Grant to Quaker Sales & Distribution, Inc. and authorizing LEDC to enter into a formal incentive agreement with the Company.
6. Consider a resolution authorizing the City Manager to execute an economic development agreement pursuant to Chapter 380, Texas Local Government Code by and between the City of Lancaster, Texas and Quaker Sales & Distribution, Inc. establishing a grant in an amount equal to fifty percent (50%) of business personal property taxes paid on certain described property for a period of ten years.
7. Consider a resolution authorizing the City Manager to execute an economic development agreement pursuant to Chapter 380, Texas Local Government Code by and between the City of Lancaster and Quaker Sales & Distribution, Inc. authorizing a ninety percent (90%) grant on certain taxable real property and improvements for a period of ten years.

ADJOURNMENT

EXECUTIVE SESSION: The Council reserves the right to convene into executive session on any posted agenda item pursuant to Section 551.071(2) of the TEXAS GOVERNMENT CODE to seek legal advice concerning such subject.

ACCESSIBILITY STATEMENT: The Municipal Center is wheelchair-accessible. For sign interpretive services, call the City Secretary's office, 972-218-1311, or TDD 1-800-735-2989, at least 72 hours prior to the meeting. Reasonable accommodation will be made to assist your needs.

Certificate

I hereby certify the above Notice of Meeting was posted at the Lancaster City Hall on November 9, 2012 @ 11:00 a.m. and copies thereof were hand delivered to the Mayor, Mayor Pro-Tempore, Deputy Mayor Pro-Tempore and Council members.



Dolle K. Dawne, TRMC
City Secretary

LANCASTER CITY COUNCIL

Item 1

Agenda Communication

November 12, 2012

Consider approval of minutes from the City Council Regular Meeting held October 22, 2012.

Background

Attached for your review and consideration are minutes from the:

- City Council Regular Meeting held October 22, 2012

Submitted by:

Dolle K. Downe, City Secretary

MINUTES

LANCASTER CITY COUNCIL MEETING OF OCTOBER 22, 2012

The City Council of the City of Lancaster, Texas, met in Regular session in the Council Chambers of City Hall on October 22, 2012 at 7:00 p.m. with a quorum present to-wit:

Councilmembers Present:

Mayor Marcus E. Knight
Walter Weaver
Stanley Jaglowski
Mayor Pro Tem Marco Mejia
Deputy Mayor Pro Tem James Daniels
LaShonjia Harris
Nina Morris

City Staff Present:

Opal Mauldin Robertson, City Manager
Alicia Oyedele, Assistant to the City Manager
Sheree Haynes, Finance Director
Dori Lee, Human Resources Director
Ed Brady, Economic Development Director
Larry Flatt, Police Chief
Thomas Griffith, Fire Chief
Rona Stringfellow Govan, Managing Director Public Works / Development Services
Jim Brewer, Assistant Director Public Works / Development Services
Shwetha Pandurangi, City Engineer
Robert E. Hager, City Attorney
Dolle Downe, City Secretary

Call to Order:

Mayor Knight called the meeting to order at 7:00 p.m. on October 22, 2012.

Invocation:

Mayor Knight gave the invocation.

Pledge of Allegiance:

Mayor Pro Tem Mejia led the pledge of allegiance.

Special Recognition:

Mayor Knight presented Girl Scout Troop 2977 a Certificate of Recognition for their community involvement. Councilmember Harris commented that she had the opportunity recently to attend one of their Girl Scout meetings and commended the girl scouts and their troop leader for their outstanding efforts in civic leadership education and community involvement.

Citizens Comments:

Jim Cheshier, 739 S. Dallas Avenue, commended an employee at the Senior Life Center; stated that there are limbs hanging on trees that could break off in Lancaster City Park and trees growing under the bridge at the golf course.

Francis Map, 410 Ash Lane, stated she has lived in Lancaster since 1988 and over the past three months has had problems with her water bill being extremely high; has asked staff to re-read the meter but no one came to read the meter manually. Mayor Knight asked staff to follow up with her directly.

Emma Morrison, 944 Oak Bluff, stated she has had a similar problem with her water bill. Mayor Knight asked staff to follow up with her.

Hazel Smith, 2829 McKenzie Lane, has a similar problem with her water bill and will talk with staff.

Consent Agenda:

City Secretary Downe read the consent agenda.

- C1. Consider approval of minutes from the City Council Regular Meeting held September 24, 2012 and Special Meeting held October 1, 2012.**
- C2. Consider a resolution approving the terms and conditions of the agreement for support services with MED3000, Inc. to provide professional ambulance billing and collection services.**
- C3. Consider a resolution approving the terms and conditions of a Local Project Advance Funding Agreement (LPAFA) made by and between the State of Texas, acting through the Texas Department of Transportation, and the City of Lancaster for a Local Fund Participation-Waived Federal Off-System Bridge Program Project and Equivalent-Match Project in connection with the Project known as Red Oak Road Bridge at Ten Mile Creek (Participation-Waived Project) and the Beltline Road Bridge Rehabilitation (Equivalent-Match Project) for the rehabilitation and repair of the Beltline Road bridge located at 728 W. Beltline Road, thereby waiving the ten percent local match fund participation on Red Oak Road Bridge at Ten Mile Creek.**
- C4. Consider a resolution to certify local funding and support the construction of streetscape to complete landscaping and median improvements as a part of the Houston School Road Streetscape Project, to the Statewide Transportation Enhancement Program for funding competition in the Texas Department of Transportation 2012 Program Call for Projects.**
- C5. Consider a resolution authorizing the purchase of one senior bus from National Bus Sales through an Interlocal Agreement with Houston Galveston Area Council (HGAC) in an amount not to exceed \$115,150.**

Deputy Mayor Pro Tem Daniels pulled consent item C5; Councilmember Weaver pulled consent item C3.

MOTION: Councilmember Morris made a motion, seconded by Deputy Mayor Pro Tem Daniels, to approve consent items C1, C2 and C4. The vote was cast 7 for, 0 against.

Councilmember Weaver requested clarifications regarding the Red Oak Road bridge project asking why not just use Moreland Road and close the Red Oak Road bridge. City Manager Mauldin Robertson stated that following TxDOT's rating of the bridges, the City is eligible to receive 100% of funding from the state under this participation-waived project (Red Oak Road bridge). City Manager Mauldin Robertson noted it would require an engineering study and other investigation to determine feasibility of closing the Red Oak Road bridge. Councilmember Weaver asked if the money could be used to repair the road instead of the bridge. City Manager Mauldin Robertson stated that the funding is only for the bridge repair.

Mayor Pro Tem Mejia asked about time restraints with regard to the project. City Engineer Pandurangi stated that it is necessary to act promptly as the project impacts the Beltline Road Bridge Project approved by Council in August and that the two bridge rehabilitation projects are tied together.

MOTION: Councilmember Weaver made a motion, seconded by Mayor Pro Tem Mejia, to approve a resolution approving the terms and conditions of a Local Project Advance Funding Agreement (LPAFA) for a Local Fund Participation-Waived Federal Off-System Bridge Program Project and Equivalent-Match Project in connection with the project known as Red Oak Road Bridge at Ten Mile Creek (Participation-Waived Project) and the Beltline Road Bridge Rehabilitation (Equivalent-Match Project) for the rehabilitation and repair of the Beltline Road bridge located at 728 W. Beltline Road [item C3] as presented. The vote was cast 7 for, 0 against.

With regard to item C5, Deputy Mayor Pro Tem Daniels asked how long before the senior bus would be operational. City Manager Mauldin Robertson stated that following approval, a purchase order would be issued, and it would be about 90 days before the bus is operational. Mayor Pro Tem Daniels commented that our seniors are very deserving.

Councilmember Morris asked about funding. City Manager Mauldin Robertson noted that the senior bus is on the Equipment Replacement List which Council reviewed and approved funding for during the budget process.

MOTION: Councilmember Weaver made a motion, seconded by Deputy Mayor Pro Tem Daniels, to approve a resolution authorizing the purchase of one senior bus from National Bus Sales through an Interlocal Agreement with Houston Galveston Area Council (HGAC) in an amount not to exceed \$115,150. The vote was cast 7 for, 0 against.

6. **Consider an ordinance amending Ordinance No. 2006-04-13, the Lancaster Development Code and Zoning Map of the City of Lancaster, as amended, by granting a change in zoning from LI, Light Industrial, to PD, Planned Development, on approximately 59.04 acres of land in the City of Lancaster, Dallas County, Texas, and more generally located on the north side of Daineldale Road approximately 1,340+ feet west of the intersection of Houston School Road and Daineldale Road.**

City Attorney Hager stated that Con-Way Truckload representatives requested this item be pulled and move through the zoning process. The item was pulled from the Council agenda.

7. Consider confirmation of Civil Service Commission appointments as designated by the City Manager.

City Manager Mauldin Robertson stated that a member of the Civil Service Commission did not desire reappointment leaving a vacancy on the Commission. City Manager Mauldin Robertson respectfully requested her nomination of Mr. Mark Gonzales be confirmed as a member with a term to expire in 2015.

MOTION: Councilmember Weaver made a motion, seconded by Mayor Pro Tem Mejia, to confirm appointment of Mr. Mark Gonzales to the Civil Service Commission for a term to expire in 2015. The vote was cast 7 for, 0 against.

8. Consider annual appointments to the City of Lancaster Historic Landmark Preservation Committee.

The Planning and Zoning Commission recommended reappointment of regular member Ms. Dee Hinkle, to move the current alternate, Ms. Patricia Siegfried-Giles to a regular position, and to leave the alternate position vacant at this time.

MOTION: Deputy Mayor Pro Tem Daniels made a motion, seconded by Councilmember Jaglowski, to confirm the reappointment of Ms. Hinkle as a regular member with a term expiring 2014, to move the alternate, Ms. Siegfried-Giles to a regular position with a term expiring 2014 and make no appointment in the alternate position at this time as recommended by the Planning and Zoning Commission. The vote was cast 6 for, 1 against [Weaver].

9. Discuss and consider confirmation of a nomination made by the Mayor for appointment to the alternate position on the City of Lancaster Zoning Board of Adjustment.

MOTION: Deputy Mayor Pro Tem Daniels made a motion, seconded by Councilmember Jaglowski, to confirm the nomination of Mr. Edward Sutton to the Zoning Board of Adjustment as an alternate member with a term expiring 2013. The vote was cast 7 for, 0 against.

10. Discuss and consider appointment of council liaisons to City Boards and Commissions.

City Council made selections to serve as council liaisons as follows:

Deputy Mayor Pro Tem Daniels	Planning and Zoning Commission
Councilmember Morris	Parks/Rec and Recreational Development Corp. (4B)
Mayor Pro Tem Mejia	Economic Development (4A)
Councilmember Weaver	Airport Advisory Board
Councilmember Jaglowski	Property Standards & Appeals Board
Councilmember Harris	Library Advisory Board
Deputy Mayor Pro Tem Daniels	Civil Service Commission
Councilmember Morris	Youth Advisory Commission

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Mayor Pro Tem Mejia
Councilmember Weaver
Councilmember Jaglowski

Zoning Board of Adjustment
Historic Landmark Preservation Committee
Animal Shelter Advisory Board

MOTION: Deputy Mayor Pro Tem Daniels made a motion, seconded by Councilmember Weaver, to adjourn. The vote was cast 7 for, 0 against.

The meeting was adjourned at 7:31 p.m.

ATTEST:

APPROVED:

Dolle K. Downe, City Secretary

Marcus E. Knight, Mayor

LANCASTER CITY COUNCIL

Item 2

Agenda Communication

November 12, 2012

Consider a resolution approving the terms and conditions of a lease agreement for copiers through an Interlocal Agreement with Texas Cooperative Purchasing Network (TCPN) (Contract R5008).

This request supports the City Council 2012-2013 Policy Agenda.

Goal: Financially Sound City Government

Background

In August 2012 staff issued a request for information and pricing to vendors with interlocal contracts through BuyBoard, the State of Texas, and TCPN. The RFI requested information on nine levels of copiers from 25 pages per minute to 75 pages per minute for both black and white printing and color printing.

Information on our current copiers was provided to the vendors. This information included copier location, copier brand/model, leased volume levels, and current average volumes. Vendors were asked to provide pricing for each level and disclose what features are included with each unit. Additionally, the vendors were asked to make recommendations based on our current usage.

Many of the recommendations were to decrease the current level of copiers by decreasing speed levels. Xerox proposed four of the nine levels and offered pricing that allowed for pooling of copies. This will allow staff to use the copiers as needed and if one unit goes over their allotted copy allowance, the pooled copies allotment will compensate and the city will not be charged for overage.

Based on the submitted pricing, staff recommends standardizing the majority of the units to a 55 page per minute color copier. This will increase productivity for the majority of users and the added security features will allow scan to desktop feature that will eliminate the scan to email and free up space on the email servers, which will benefit the City by the potential decrease in server space.

Considerations

- **Operational** – Approval of this purchase will provide staff with new working equipment that will increase productivity by decreasing downtime. In addition, this will provide a savings in supplies that will offset those departments that are seeing an increase.

Use of cooperative contracts allows Purchasing to meet the needs of the City departments on a timely basis through the use of contracts that are in place. These contracts save time associated with issuing bids or in obtaining quotes. Additionally, savings is achieved through aggregate volumes either through joint bidding opportunities or by addressing the cooperative language within the specifications to the vendors.

- **Legal** – The City maintains an executed Interlocal Agreement with TCPN, a cooperative agency. Texas law authorizes cooperative agreements to help save time in developing specifications and duplication during the bid process.
- **Financial** – Funding for the copiers is available in the department's operational budgets. A savings of \$1479.48 per month over the current pricing will be achieved.
- **Public Information** - There are no public information requirements.

Options/Alternatives

1. City Council may approve the resolution as presented.
2. City Council may reject the resolution and direct staff.

Recommendation

Staff recommends approving the interlocal agreement as submitted.

Attachments

- Resolution
- Lease Agreements
- Tab Sheets

Submitted by:
Dawn Berry, Purchasing Agent

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A LEASE AGREEMENT FOR COPIERS THROUGH AN INTERLOCAL AGREEMENT WITH TEXAS COOPERATIVE PURCHASING NETWORK (TCPN) (CONTRACT R5008); AUTHORIZING THE CITY MANAGER TO EXECUTE THE LEASE AGREEMENTS; REPEALING ALL RESOLUTIONS IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council desires to lease new copiers and utilize TCPN's Interlocal Agreement with Xerox Corporation.

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

SECTION 1. The City Council approves the terms and conditions of a lease agreement for copiers from Xerox Corporation through an Interlocal Agreement with TCPN at the monthly unit prices stated in the lease documents, a copy is attached and incorporated as Exhibit A.

SECTION 2. The City Manager is authorized to execute the lease agreements.

SECTION 3. Any prior Resolution of the City Council in conflict with the provisions contained in this Resolution are hereby repealed and revoked.

SECTION 4. Should any part of this Resolution be held to be invalid for any reason, the remainder shall not be affected thereby, and such remaining portions are hereby declared to be severable.

SECTION 5. This Resolution shall take effect immediately from and after its passage, and it is duly resolved.

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 12th day of November 2012.

ATTEST:

APPROVED:

Dolle K. Downe, City Secretary

Marcus E. Knight, Mayor

APPROVED AS TO FORM:

Robert E. Hager, City Attorney

Pool Plan Agreement



Customer: LANCASTER, CITY OF

BillTo: City of Lancaster
PO Box 940
Lancaster, TX 75146-0940

Plan Summary

Configuration	Monthly Charge	Pool Print Charges			Plan Features
		Meter	Volume Band	Per Print Rate	
11 Items	\$3,749.24	1: Total	1 - 110,000	Included	Maintenance Coverage - Consumable Supplies Included for all prints - Pricing Fixed for Term Administrative - Identification Number: NEW - Meters Reconciled Monthly - Plan to take effect on 12/1/2012
Modification Summary - Adding: 11 Items			110,001+	\$0.0073	

Item Details

Configuration	Unit Portion of Charge	Volume Included
Adding		
1. W7556PC	\$340.84	10,000
2. W7556PC	\$340.84	10,000
3. W7556PC	\$340.84	10,000
4. W7556PC	\$340.84	10,000
5. W7556PC	\$340.84	10,000
6. W7556PC	\$340.84	10,000
7. W7556PC	\$340.84	10,000
8. W7556PC	\$340.84	10,000
9. W7556PC	\$340.84	10,000
10. W7556PC	\$340.84	10,000
11. W7556PC	\$340.84	10,000

Authorized Signature

Customer acknowledges receipt of the terms of this agreement
which consists of 2 pages including this face page.

Signer: Opal Mauldin Robertson

Phone: (972)218-1302

Signature: _____

Date: _____

Thank You for your business!
This Agreement is proudly presented by Xerox and

Lyn Kelly
(214)277-6126

For information on your Xerox Account, go to
www.xerox.com/AccountManagement

Pool Plan Agreement



Terms and Conditions

POOLING TERMS AND CONDITIONS:

1. This Pool Plan Agreement (including the Exhibits hereto) (collectively, "Agreement") modifies certain prior agreements (the "Underlying Agreements") entered into between you and Xerox for the rental, lease or maintenance of that equipment indicated on the attached Pool Plan Pricing Exhibit (the "Pooled Equipment").

2. **POOL CREATION.** The Pool Plan is a pricing arrangement covering the Pooled Equipment, each unit of which has been assigned a specified monthly Unit Portion Charge, a designated number of prints included within the Unit Portion Charge (the "Prints Included"), and an excess usage charge for each print made beyond the Prints Included (the "Excess Rate per Print"), all of which is set out in the Pool Plan Pricing Exhibit. The individual Unit Portion Charges and Prints Included are added together to create respectively the Pool Monthly Charge and the Pool Prints Included.

3. **AMENDMENT OF UNDERLYING AGREEMENTS.** In addition to the pricing changes for the Pooled Equipment set out in the Pool Plan Pricing Exhibit, you agree that by entering into this Agreement you have amended the Underlying Agreements in the following manner:

A. **SUPPLIES INCLUDED.** All Pooled Equipment shall either have supplies included as part of the amounts you pay under the Pool Plan or not, as indicated in this Agreement. If supplies are included, they shall be provided to you by Xerox pursuant to the standard Xerox terms for such arrangements in effect throughout the course of this Agreement.

B. **FIXED PRICING.** All Pooled Equipment shall either have the pricing you pay for the rental or maintenance of that equipment fixed or not, as indicated in this Agreement. If the pricing is fixed, Xerox shall forego any rights it might have pursuant to the Underlying Agreements to increase the amount you pay to rent or maintain the Pooled Equipment throughout the initial term of each Underlying Agreement.

C. **BILLING.** Xerox shall have the right to send all bills related to the Pooled Equipment to the Address indicated on this Agreement and to send such bills in accordance with the terms established hereunder.

4. **COMMENCEMENT DATE.** The Pool Plan Commencement Date shall be the later of (a) the date of this Agreement, or (b) the install date of the first unit(s) of Pooled Equipment.

5. **BILLING OF POOL PLAN CHARGES.** The Pool Monthly Charge is billed in advance. Charges for any prints made beyond the Pool Prints Included shall be made at the Excess Rate per Print and billed in arrears at intervals consistent with the Meter Reconciliation Period established under this Agreement. Invoicing will commence upon the Pool Plan Commencement Date (regardless of whether additional installations of Pooled Equipment are anticipated). The Pool Monthly Charge and Pool Impressions Included (a) will be prorated during any given month based upon Pooled Equipment not yet installed, and (b) will be adjusted for any units of Pooled Equipment subject to a K-16 Billing Suspension arrangement. All payments are due within thirty (30) days of the invoice date or on the due date listed on the invoice, whichever is earlier.

6. **ADDITIONAL CHARGES FOR POOLED EQUIPMENT.** In addition to those payments due under this Agreement, you are responsible for the following additional payments required under the Underlying Agreements: (a) any payments stemming from the Cash Sale or Installment Sale of Pooled Equipment; (b) any premiums agreed to in exchange for Extended or Enhanced service coverage; (c) any payments stemming from charges captured on the second Meter (i.e., Meter 2) of any Pooled Equipment; (d) any Supplies and Application Software charges; and, (e) any Use Charges due on leased Pooled Equipment (unless these charges are billed exclusively through the price you pay per print in the Underlying Agreement). For purposes of this Agreement, Use Charges shall be defined as those amounts you pay Xerox for the use of any leased Pooled Equipment (as opposed to its maintenance). For details regarding the billing of any applicable Use Charges, see the attached Use Charge Pricing Exhibit.

7. **PRICING CHANGES.** Unless the Pool Pricing is fixed (as described in Section 2 above), Xerox may annually adjust the Pool Monthly Charge, Pool Prints Included, and Excess Rate per Print. (For state and local government customers, this adjustment

shall take place at the commencement of each of your annual contract cycles.)

8. **TAXES.** You shall be responsible for any and all applicable Taxes, which will be included in Xerox's invoice unless you provide proof of your tax exempt status. Taxes due on the Pool Monthly Charge will be the sum of the applicable state and local taxes due on the individual Unit Portion Charges based upon the location of each unit of Pooled Equipment. Taxes due on prints made beyond the Pool Prints Included will be based on the applicable state and local taxes and equitably apportioned amongst the units in the Pool. If a taxing authority determines that Xerox did not collect all applicable Taxes, you shall remain liable to Xerox for such additional Taxes.

9. **MODIFICATION OF PRIOR XEROX AGREEMENT.** If this option has been selected, this Agreement will modify a prior Pool Plan Agreement between you and Xerox covering the Pooled Equipment such that the prior agreement shall remain as written except for any new terms presented in this modification agreement (e.g., changes regarding Fixed Pricing).

10. **ADDITIONS, DELETIONS, AND CHANGES.** You may add Equipment to and/or delete Equipment from the Pool at any time, provided that the Underlying Agreements covering any Equipment added to the Pool shall be amended in accordance with the terms of this Agreement. Once an addition or deletion takes place (or an Underlying Agreement is terminated, renewed, or modified), Xerox shall have the right to equitably adjust the Pool Monthly Charge, Pool Prints Included, and Excess Rate per Print amounts. Note that any such adjustments (as well as any other Pool Plan pricing adjustments made pursuant to this Agreement) shall allow for specific adjustments to the Unit Portion Charge, Prints Included, and Excess Rate per Print of each unit of Pooled Equipment.

11. **TERMINATION.** Either party may terminate this Agreement for its own business reasons upon 30 days written notice. In this event, and with regard to individual units of Pooled Equipment removed from the Pool Plan pursuant to Section 10 above, the Underlying Agreements shall be in full force and effect as written prior to their being amended by this Agreement except that (a) any amendments to the Underlying Agreements created under Section 2 of this Agreement shall remain in effect, and (b) the pricing for the equipment covered by the Underlying Agreements may be recalculated by Xerox as follows:

i. all Maintenance and Rental Agreements may be charged at the standard, applicable Xerox rate then in effect for you;

ii. all Lease Agreements under which you received a separate bill for the Minimum Lease Payments (i.e., those leases under which these charges were paid outside the Pool Plan) shall continue to result in one bill for the Minimum Lease Payments and a second bill for the Periodic Base Charges and all Print Charges for your leases (which may be charged at the standard, applicable Xerox rate then in effect for you); and,

iii. all Lease Agreements under which your Use Charges were billed exclusively through the price you paid per print in the Underlying Agreements may be adjusted in order to render the Periodic Base Charges and all Print Charges for your leases consistent with the standard, applicable Xerox rate then in effect for you.

12. **MISCELLANEOUS.** This Agreement constitutes the entire agreement as to its subject matter, and supersedes all prior and contemporaneous oral and written agreements regarding said subject matter. Except as set forth in this Agreement, the Underlying Agreements shall remain as stated. In the event of a conflict between the terms of the Underlying Agreements and this Agreement, this Agreement shall control. Xerox may retain a reproduction (e.g., electronic image, photocopy, or facsimile) of this Agreement which shall be considered an original and shall be admissible in any action to enforce this Agreement. Xerox may accept this Agreement either by its signature or commencing performance. Other than changes regarding equipment covered and pricing, which Xerox may adjust as per your instructions and/or its rights under this Agreement, all changes to this Agreement must be made in a writing signed by both parties; accordingly, any terms on your ordering documents shall be of no force or effect.

Lease Agreement



Customer: LANCASTER, CITY OF

BillTo: CITY OF LANCASTER
P O BOX 940
LANCASTER, TX 75146-0940

Install: CITY OF LANCASTER
ADMINISTRATION
211 N HENRY
LANCASTER, TX 75146-2569

Tax ID#: N/A

Negotiated Contract : 072535000

Solution

Item	Product Description	Agreement Information	Trade Information	Requested Install Date
1. W7556PC (WC7556P PRINTER)	<ul style="list-style-type: none"> - 3-hole Punch(fin-lx) - 1 Line Fax - Office Finisher Lx - Hi Cap Tandem Tray - Customer Ed - Analyst Services 	Lease Term: 36 months Purchase Option: FMV <i>Admin</i>	- Xerox W7675P S/N VDR566489 Trade-In as of Payment 41	11/16/2012
2. W7556PC (WC7556P PRINTER)	<ul style="list-style-type: none"> - 3-hole Punch(fin-lx) - 1 Line Fax - Office Finisher Lx - Hi Cap Tandem Tray - Customer Ed - Analyst Services 	Lease Term: 36 months Purchase Option: FMV <i>Finance</i>	- Xerox W7655P S/N VDR562891 Trade-In as of Payment 47	11/16/2012

Monthly Pricing

Item	Lease Minimum Payment	Meter	Print Charges Volume Band	Per Print Rate	Maintenance Plan Features
1. W7556PC	\$340.84	1: BW 2: COLOR	1 - 10,000 10,001+ All Prints	Included \$0.0073 \$0.0496	- Consumable Supplies Included for all prints - Pricing Fixed for Term

Authorized Signature

Customer acknowledges receipt of the terms of this agreement
which consists of 5 pages including this face page.

Signer: Opal Mauldin Robertson

Phone: (972)218-1302

Signature: _____

Date: _____

Thank You for your business!
This Agreement is proudly presented by Xerox and

Lyn Kelly
(214)277-6126

For information on your Xerox Account, go to
www.xerox.com/AccountManagement



Lease Agreement



Monthly Pricing (Cont'd)

Item	Lease Minimum Payment	Print Charges			Maintenance Plan Features
		Meter	Volume Band	Per Print Rate	
2. W7556PC	\$340.84	1: BW	1 - 10,000	Included	- Consumable Supplies Included for all prints - Pricing Fixed for Term
			10,001+	\$0.0073	
		2: COLOR	All Prints	\$0.0496	
Total	\$681.68	Minimum Payments (Excluding Applicable Taxes)			

Lease Agreement



Customer: LANCASTER, CITY OF

BillTo: CITY OF LANCASTER
PO BOX 940
LANCASTER, TX 75146-0940

Install: CITY OF LANCASTER
FIRE DEPT
1650 N DALLAS AVE
LANCASTER, TX 75134-3260

Tax ID#: N/A

Negotiated Contract : 072535000

Solution

Item	Product Description	Agreement Information		Trade Information	Requested Install Date
1. W7556PC (WC7556P PRINTER)	<ul style="list-style-type: none"> - 3-hole Punch(fin-lx) - 1 Line Fax - Office Finisher Lx - Hi Cap Tandem Tray - Customer Ed - Analyst Services 	Lease Term:	36 months	- Xerox WC7232P S/N GBP244037	11/16/2012
		Purchase Option:	FMV	Trade-In as of Payment 36	
2. W7556PC (WC7556P PRINTER)	<ul style="list-style-type: none"> - 3-hole Punch(fin-lx) - 1 Line Fax - Office Finisher Lx - Hi Cap Tandem Tray - Customer Ed - Analyst Services 	Lease Term:	36 months	- Xerox WCM20I S/N RYU009665	11/16/2012
		Purchase Option:	FMV	Trade-In as of Payment 36	
3. W7556PC (WC7556P PRINTER)	<ul style="list-style-type: none"> - 3-hole Punch(fin-lx) - 1 Line Fax - Office Finisher Lx - Hi Cap Tandem Tray - Customer Ed - Analyst Services 	Lease Term:	36 months	- Xerox WC7232P S/N GBP244469	1/8/2013
		Purchase Option:	FMV	Trade-In as of Payment 36	

Authorized Signature

Customer acknowledges receipt of the terms of this agreement
which consists of 5 pages including this face page.

Signer: Opal Mauldin Robertson

Phone: (972)218-1302

Signature: _____

Date: _____

Thank You for your business!
This Agreement is proudly presented by Xerox and

Lyn Kelly
(214)277-6126

For information on your Xerox Account, go to
www.xerox.com/AccountManagement



Lease Agreement



Solution (Cont'd)

Item	Product Description	Agreement Information	Trade Information	Requested Install Date
4.	W7556PC (WC7556P PRINTER) - 3-hole Punch(fin-lx) - 1 Line Fax - Office Finisher Lx - Hi Cap Tandem Tray - Customer Ed - Analyst Services	Lease Term: 36 months Purchase Option: FMV <i>Police 2</i>	- Xerox WC7232P S/N GBP244442 Trade-In as of Payment 36	1/8/2013

Monthly Pricing

Item	Lease Minimum Payment	Print Charges			Maintenance Plan Features
		Meter	Volume Band	Per Print Rate	
1. W7556PC	\$340.84	1: BW 2: COLOR	1 - 10,000 10,001+ All Prints	Included \$0.0073 \$0.0496	- Consumable Supplies Included for all prints - Pricing Fixed for Term
2. W7556PC	\$340.84	1: BW 2: COLOR	1 - 10,000 10,001+ All Prints	Included \$0.0073 \$0.0496	- Consumable Supplies Included for all prints - Pricing Fixed for Term
3. W7556PC	\$340.84	1: BW 2: COLOR	1 - 10,000 10,001+ All Prints	Included \$0.0073 \$0.0496	- Consumable Supplies included for all prints - Pricing Fixed for Term
4. W7556PC	\$340.84	1: BW 2: COLOR	1 - 10,000 10,001+ All Prints	Included \$0.0073 \$0.0496	- Consumable Supplies Included for all prints - Pricing Fixed for Term
Total	\$1,363.36	Minimum Payments (Excluding Applicable Taxes)			

Lease Agreement



BillTo: CITY OF LANCASTER
PO BOX 940
LANCASTER, TX 75146-0940

Install: CITY OF LANCASTER
RECREATION CENTER
MEMORIAL PKWY
1700 VETERANS
LANCASTER, TX 75134

Tax ID#: N/A

Negotiated Contract : 072535000

Solution

Item	Product Description	Agreement Information	Trade Information	Requested Install Date
1. W7556PC (WC7556P PRINTER)	<ul style="list-style-type: none"> - 3-hole Punch(fin-lx) - 1 Line Fax - Office Finisher Lx - Hi Cap Tandem Tray - Customer Ed - Analyst Services 	Lease Term: 36 months Purchase Option: FMV <i>Rec 1</i>	- Xerox CC35 S/N MYP027055 Trade-In as of Payment 97	11/16/2012
2. W7556PC (WC7556P PRINTER)	<ul style="list-style-type: none"> - 3-hole Punch(fin-lx) - 1 Line Fax - Office Finisher Lx - Hi Cap Tandem Tray - Customer Ed - Analyst Services 	Lease Term: 36 months Purchase Option: FMV <i>Rec 2</i>	- Xerox WC7345P S/N FKA933318 Trade-In as of Payment 47	11/16/2012

Monthly Pricing

Item	Lease Minimum Payment	Print Charges			Maintenance Plan Features
		Meter	Volume Band	Per Print Rate	
1. W7556PC	\$340.84	1: BW 2: COLOR	1 - 10,000 10,001+ All Prints	Included \$0.0073 \$0.0496	- Consumable Supplies Included for all prints - Pricing Fixed for Term
2. W7556PC	\$340.84	1: BW 2: COLOR	1 - 10,000 10,001+ All Prints	Included \$0.0073 \$0.0496	- Consumable Supplies Included for all prints - Pricing Fixed for Term
Total	\$681.68	Minimum Payments (Excluding Applicable Taxes)			

Lease Agreement



BillTo: CITY OF LANCASTER
PO BOX 940
LANCASTER, TX 75146-0940

Install: CITY OF LANCASTER
WATER/ WASTEWATER
1999 N JEFFERSON ST
LANCASTER, TX 75134-3432

Tax ID#: N/A

Negotiated Contract : 072535000

Solution

Item	Product Description	Agreement Information	Requested Install Date
1. W7556PC (WC7556P PRINTER)	<ul style="list-style-type: none"> - 3-hole Punch(fin-lx) - 1 Line Fax - Office Finisher Lx - Hi Cap Tandem Tray - Customer Ed - Analyst Services 	Lease Term: 36 months Purchase Option: FMV <i>Pump Station</i>	11/16/2012

Monthly Pricing

Item	Lease Minimum Payment	Print Charges			Maintenance Plan Features
		Meter	Volume Band	Per Print Rate	
1. W7556PC	\$340.84	1: BW	1 - 10,000	Included	• Consumable Supplies Included for all prints • Pricing Fixed for Term
			10,001+	\$0.0073	
		2: COLOR	All Prints	\$0.0496	
Total	\$340.84	Minimum Payments (Excluding Applicable Taxes)			

Lease Agreement



Terms and Conditions

INTRODUCTION:

1. NEGOTIATED CONTRACT. The Products are subject solely to the terms in the Negotiated Contract identified on the face of this Agreement, and, for any option you have selected that is not addressed in the Negotiated Contract, the then-current standard Xerox terms for such option.

PRICING PLAN/OFFERING SELECTED:

2. FIXED PRICING. If "Pricing Fixed for Term" is identified in Maintenance Plan Features, the maintenance component of the Minimum Payment and Print Charges will not increase during the initial Term of this Agreement.

GENERAL TERMS & CONDITIONS:

3. REMOTE SERVICES. Certain models of Equipment are supported and serviced using data that is automatically collected by Xerox from the Equipment via electronic transmission from the Equipment to a secure off-site location. Examples of automatically transmitted data include product registration, meter read, supply level, Equipment configuration and settings, software version, and problem/fault code data. All such data shall be transmitted in a secure manner specified by Xerox. The automatic data transmission capability will not allow Xerox to read, view or download the content of any Customer documents residing on or passing through the Equipment or Customer's information management systems.

Lease Agreement



BillTo: CITY OF LANCASTER
P O BOX 940
LANCASTER, TX 75146-0940

Install: CITY OF LANCASTER
SENIOR CENTER
MEMORIAL PKWY
240 VETERANS
LANCASTER, TX 75134-3317

Tax ID#: N/A

Negotiated Contract : 072535000

Solution

Item	Product Description	Agreement Information		Trade Information	Requested Install Date
1.	W7556PC (WC7556P PRINTER) - 3-hole Punch(fin-lx) - 1 Line Fax - Office Finisher Lx - Hi Cap Tandem Tray - Customer Ed - Analyst Services	Lease Term:	36 months	- Xerox WC7345P S/N FKA620130 Trade-In as of Payment 60	11/16/2012
		Purchase Option:	FMV		

Monthly Pricing

Item	Lease	Print Charges			Maintenance Plan Features
	Minimum Payment	Meter	Volume Band	Per Print Rate	
1. W7556PC	\$340.84	1: BW 2: COLOR	1 - 10,000 10,001+ All Prints	Included \$0.0073 \$0.0496	- Consumable Supplies Included for all prints - Pricing Fixed for Term
Total	\$340.84	Minimum Payments (Excluding Applicable Taxes)			

Lease Agreement



Bill To: CITY OF LANCASTER
P O BOX 940
LANCASTER, TX 75146-0940

Install: CITY OF LANCASTER
SERVICE CENTER
700 E MAIN ST
LANCASTER, TX 75146-3267

Tax ID#: N/A

Negotiated Contract : 072535000

Solution

Item	Product Description	Agreement Information		Trade Information	Requested Install Date
1.	W7556PC (WC7556P PRINTER) - 3-hole Punch(fin-lx) - 1 Line Fax - Office Finisher Lx - Hi Cap Tandem Tray - Customer Ed - Analyst Services	Lease Term:	36 months	- Xerox WC7345P S/N FKA936929 Trade-In as of Payment 43	11/16/2012
		Purchase Option:	FMV		

Monthly Pricing

Item	Lease Minimum Payment	Print Charges			Maintenance Plan Features
		Meter	Volume Band	Per Print Rate	
1. W7556PC	\$340.84	1: BW	1 - 10,000	Included	- Consumable Supplies Included for all prints - Pricing Fixed for Term
			10,001+	\$0.0073	
		2: COLOR	All Prints	\$0.0496	
Total	\$340.84	Minimum Payments (Excluding Applicable Taxes)			

Lease Agreement



Terms and Conditions

INTRODUCTION:

1. NEGOTIATED CONTRACT. The Products are subject solely to the terms in the Negotiated Contract identified on the face of this Agreement, and, for any option you have selected that is not addressed in the Negotiated Contract, the then-current standard Xerox terms for such option.

PRICING PLAN/OFFERING SELECTED:

2. FIXED PRICING. If "Pricing Fixed for Term" is identified in Maintenance Plan Features, the maintenance component of the Minimum Payment and Print Charges will not increase during the initial Term of this Agreement.

GENERAL TERMS & CONDITIONS:

3. REMOTE SERVICES. Certain models of Equipment are supported and serviced using data that is automatically collected by Xerox from the Equipment via electronic transmission from the Equipment to a secure off-site location. Examples of automatically transmitted data include product registration, meter read, supply level, Equipment configuration and settings, software version, and problem/fault code data. All such data shall be transmitted in a secure manner specified by Xerox. The automatic data transmission capability will not allow Xerox to read, view or download the content of any Customer documents residing on or passing through the Equipment or Customer's information management systems.

Lease Agreement



Customer: LANCASTER, CITY OF

BillTo: CITY OF LANCASTER
POLICE DEPARTMENT
PO BOX 940
LANCASTER, TX 75146-0940

Install: CITY OF LANCASTER
FIRE STATION #1
1650 N DALLAS AVE
LANCASTER, TX 75134-3260

State or Local Government Negotiated Contract : 072535300

TCPN Contract R5008

Solution

Item	Product Description	Agreement Information	Requested Install Date
1. MFP3300X (3300MFP-SCAN/FAX/DUP)	- 250 Sheet Tray - Carrier Deliv/instal	Lease Term: 36 months Purchase Option: FMV	11/16/2012

Monthly Pricing

Item	Lease Minimum Payment	Print Charges			Maintenance Plan Features
		Meter	Volume Based	Per Print Rate	
1. MFP3300X	\$43.96	1: Meter 1	1 - 500 501+	Included \$0.0323	- Consumable Supplies Included for all prints - Pricing Fixed for Term
Total	\$43.96	Minimum Payments (Excluding Applicable Taxes)			

Authorized Signature

Customer acknowledges receipt of the terms of this agreement
which consists of 4 pages including this face page.

Signer: Opal Mauldin Robertson

Phone: (972)218-1302

Signature: _____

Date: _____

Thank You for your business!
This Agreement is proudly presented by Xerox and

Lyn Kelly
(214)277-6126

For information on your Xerox Account, go to
www.xerox.com/AccountManagement



Lease Agreement



BillTo: CITY OF LANCASTER
POLICE DEPARTMENT
PO BOX 940
LANCASTER, TX 75146-0940

Install: CITY OF LANCASTER
FIRE STATION #2
SCHOOL RD
3132 S HOUSTON
LANCASTER, TX 75146-4530

State or Local Government Negotiated Contract : 072535300

Solution

Item	Product Description	Agreement Information	Requested Install Date
1. MFP3300X (3300MFP-SCAN/FAX/DUP)	- 250 Sheet Tray - Carrier Deliv/instal	Lease Term: 36 months Purchase Option: FMV	11/16/2012

Monthly Pricing

Item	Lease Minimum Payment	Print Charges			Maintenance Plan Features
		Meter	Volume Band	Per Print Rate	
1. MFP3300X	\$43.96	1: Meter 1	1 - 500 501+	Included \$0.0323	- Consumable Supplies Included for all prints - Pricing Fixed for Term
Total	\$43.96	Minimum Payments (Excluding Applicable Taxes)			

Lease Agreement



BillTo: CITY OF LANCASTER
POLICE DEPARTMENT
PO BOX 940
LANCASTER, TX 75146-0940

Install: CITY OF LANCASTER
FIRE STATION 3
1960 W BELT LINE RD
LANCASTER, TX 75146-2015

State or Local Government Negotiated Contract : 072535300

Solution

Item	Product Description	Agreement Information	Requested Install Date
1. MFP3300X (3300MFP-SCAN/FAX/DUP)	- 250 Sheet Tray - Carrier Deliv/instal	Lease Term: 36 months Purchase Option: FMV	11/16/2012

Monthly Pricing

Item	Lease Minimum Payment	Print Charges			Maintenance Plan Features
		Meter	Volume Band	Per Print Rate	
1. MFP3300X	\$43.96	1: Meter 1	1 - 500 501+	Included \$0.0323	- Consumable Supplies Included for all prints - Pricing Fixed for Term
Total	\$43.96	Minimum Payments (Excluding Applicable Taxes)			

Terms and Conditions

INTRODUCTION:

1. NEGOTIATED CONTRACT. The Products are subject solely to the terms in the Negotiated Contract identified on the face of this Agreement, and, for any option you have selected that is not addressed in the Negotiated Contract, the then-current standard Xerox terms for such option.

GOVERNMENT TERMS:

2. REPRESENTATIONS & WARRANTIES. This provision is applicable to governmental entities only. You represent and warrant, as of the date of this Agreement, that: (1) you are a State or a fully constituted political subdivision or agency of the State in which you are located and are authorized to enter into, and carry out, your obligations under this Agreement and any other documents required to be delivered in connection with this Agreement (collectively, the "Documents"); (2) the Documents have been duly authorized, executed and delivered by you in accordance with all applicable laws, rules, ordinances and regulations (including all applicable laws governing open meetings, public bidding and appropriations required in connection with this Agreement and the acquisition of the Products) and are valid, legal, binding agreements, enforceable in accordance with their terms; (3) the person(s) signing the Documents have the authority to do so, are acting with the full authorization of your governing body and hold the offices indicated below their signatures, each of which are genuine; (4) the Products are essential to the immediate performance of a governmental or proprietary function by you within the scope of your authority and will be used during the Term only by you and only to perform such function; and (5) your payment obligations under this Agreement constitute a current expense and not a debt under applicable state law and no provision of this Agreement constitutes a pledge of your tax or general revenues, and any provision that is so construed by a court of competent jurisdiction is void from the inception of this Agreement.

3. FUNDING. This provision is applicable to governmental entities only. You represent and warrant that all payments due and to become due during your current fiscal year are within the fiscal budget of such year and are included within an unrestricted and

unencumbered appropriation currently available for the Products, and it is your intent to use the Products for the entire term of this Agreement and make all payments required under this Agreement. If your legislative body does not appropriate funds for the continuation of this Agreement for any fiscal year after the first fiscal year and has no funds to do so from other sources, this Agreement may be terminated. To effect this termination, you must, at least 30 days prior to the beginning of the fiscal year for which your legislative body does not appropriate funds, notify Xerox in writing that your legislative body failed to appropriate funds. Your notice must be accompanied by payment of all sums then owed through the current fiscal year under this Agreement. You will return the Equipment, at your expense, to a location designated by Xerox and, when returned, the Equipment will be to in good condition and free of all liens and encumbrances. You will then be released from any further payment obligations beyond those payments due for the current fiscal year (with Xerox retaining all sums paid to date).

PRICING PLAN/OFFERING SELECTED:

4. FIXED PRICING. If "Pricing Fixed for Term" is identified in Maintenance Plan Features, the maintenance component of the Minimum Payment and Print Charges will not increase during the initial Term of this Agreement.

GENERAL TERMS & CONDITIONS:

5. REMOTE SERVICES. Certain models of Equipment are supported and serviced using data that is automatically collected by Xerox from the Equipment via electronic transmission from the Equipment to a secure off-site location. Examples of automatically transmitted data include product registration, meter read, supply level, Equipment configuration and settings, software version, and problem/fault code data. All such data shall be transmitted in a secure manner specified by Xerox. The automatic data transmission capability will not allow Xerox to read, view or download the content of any Customer documents residing on or passing through the Equipment or Customer's information management systems.

Lease Agreement



Customer: LANCASTER, CITY OF

BillTo: CITY OF LANCASTER
PO BOX 940
LANCASTER, TX 75146-0940

Install: LANCASTER MUNICIPAL
AIRPORT
730 FERRIS RD
LANCASTER, TX 75146-5576

Tax ID#: N/A

Negotiated Contract : 072535000

TCPN Contract #R5008

Solution

Item	Product Description	Agreement Information	Requested Install Date
1. W7120PTC (WC7120P PRINTER/TRAY)	<ul style="list-style-type: none"> - 1 Line Fax Lan Ifax - Integrated Ofc Fin - Postscript Kit - Customer Ed - Analyst Services 	Lease Term: 36 months Purchase Option: FMV	11/16/2012

Monthly Pricing

Item	Lease Minimum Payment	Print Charges			Maintenance Plan Features
		Meter	Volume Band	Per Print Rate	
1. W7120PTC	\$178.86	1: BW 2: Color	All Prints All Prints	\$0.0090 \$0.0656	- Consumable Supplies Included for all prints - Pricing Fixed for Term
Total	\$178.86	Minimum Payments (Excluding Applicable Taxes)			

Authorized Signature

Customer acknowledges receipt of the terms of this agreement which consists of 2 pages including this face page.

Signer: Opal Mauldin Robertson

Phone: (972)218-1302

Signature: _____

Date: _____

Thank You for your business!
This Agreement is proudly presented by Xerox and

Lyn Kelly
(214)277-6126

For information on your Xerox Account, go to
www.xerox.com/AccountManagement



Terms and Conditions

INTRODUCTION:

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PRICING PLAN/OFFERING SELECTED:

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DEPARTMENT - LOCATION	CURRENT AMOUNT	MODEL	Copier Level	Xerox Price	DataMax	Imagetek	Documation
Administration							
211 N HENRY	\$900.89	7675	6	340.84	545.37	517.08	456.42
Finance							
211 N. Henry	\$564.14	7655	6	384.84	545.37	517.08	456.42
Fire - 1 - downstairs							
1525 N. Dallas Avenue	\$310.65	7232	6	340.84	545.37	517.08	456.42
Fire - 2 - upstairs							
1525 N. Dallas Avenue	\$83.25	M20	6	340.84	545.37	517.08	456.42
Library							
1600 Veterans Memorial	\$350.80	5632P	6	340.84	545.37	517.08	456.42
Senior Center							
240 Veteran's Memorial	\$476.38	7345	6	340.84	545.37	517.08	456.42
Court							
220 Main	\$268.72	5645PT	6	340.84	545.37	517.08	456.42
Water Department							
1999. Jefferson	\$87.32	WCM20i	6	340.84	545.37	517.08	456.42
Recreation B&W							
1700 Veteran's Memorial	\$321.14	WCP35	6	340.84	545.37	517.08	456.42
Recreation Color							
1700 Veteran's Memorial	\$476.38	7345	6	340.84	545.37	517.08	456.42
Police 1							
1501 N. Dallas Avenue	\$406.77	7232	6	340.84	545.37	517.08	456.42
Police 2							
1501 N. Dallas Avenue	\$406.77	7232	6	340.84	545.37	517.08	456.42
Service Center							
700 E. Main	\$479.14	7345	6	340.84	545.37	517.08	456.42
Housing B&W				No	No	No	No
1425 N. Dallas Avenue	\$395.91	5645		Replacement	Replacement	Replacement	Replacement
Regions Color				No	No	No	No
1425 N. Dallas Avenue	\$743.15	7655		Replacement	Replacement	Replacement	Replacement
Sub Total	\$6,271.41			\$4,474.92	\$7,089.81	\$6,722.04	\$5,933.46
Airport							
730 Ferris Rd.	New			178.86			
Fire Station 1							
1650 Dallas Ave	New			46.05			

DEPARTMENT - LOCATION	CURRENT AMOUNT	MODEL	Copier Level	Xerox Price	DataMax	Imagetek	Documation
 Fire Station 2							
3132 Houston School Rd	New			46.05			
 Fire Station 3							
1960 W.Beltline Rd.	New			46.05			
	\$6,271.41			\$4,791.93			

LANCASTER CITY COUNCIL

Item 3

Agenda Communication

November 12, 2012

Consider a resolution approving Amendment 4 to the meal services contract, [bid#09-004] with The Paper Plate in an amount not to exceed \$4.25 per meal for senior services.

This request supports the City Council 2012-2013 Policy Agenda.

Goal: Healthy, Safe & Vibrant Neighborhoods

Background

In December 2008, City Council approved a one year contract with The Paper Plate to provide meal services for the senior meal program. The contract contained four one year renewal options. Meals are reimbursed through the Dallas Area Agency on Aging (DAAA) up to \$6.04 per meal.

Year 1	Original Contract Amount	\$3.85
Year 2	Amendment 1: 5.5% Increase	\$4.06
Year 3	Amendment 2: 3% Increase	\$4.18
Year 4	Amendment 3: 2% Increase	\$4.25
Year 5	Amendment 4: 0% Increase	\$4.25

The seniors, as required by the State, are requested to make a voluntary contribution of \$1.00 per meal. The funds received are used to cover as many meals as possible and the remaining are paid for by the DAAA contribution.

Paper plates, cups, and utensils are purchased from the balance (\$6.04 - \$4.25= \$1.79).

The senior senate of the Lancaster Senior Life Center voted and approved recommendation of keeping The Paper Plate as the senior meal provider.

Considerations

- **Operational** - This is an annual amendment (continuation) to the agreement.
- **Legal** - As required by the original contract, a written amendment outlining the changes is attached. The amendment was reviewed by the City Attorney.
- **Financial** - Funding for this project is provided by a reimbursement from the Dallas Area Agency on Aging.

- **Public Information** - There are no public information requirements.

Options/Alternatives

1. Council may approve the amendment as presented.
2. Council may reject the amendment and direct staff.

Recommendation

Staff recommends approval of the item as presented.

Attachments

- Resolution
- Exhibit A: Amendment

Submitted by:

Sean Johnson, Parks, Recreation & Library Services Director

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, AUTHORIZING AN AMENDMENT TO THE MEAL SERVICES CONTRACT, BID # 09-004, WITH THE PAPER PLATE IN AN AMOUNT NOT TO EXCEED \$4.25 PER MEAL (NO INCREASE); AUTHORIZING THE CITY MANAGER TO EXECUTE THE AMENDMENT PURSUANT TO APPROVAL; REPEALING ALL RESOLUTIONS IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City has been designated as an agency for Dallas Area Agency on Aging to provide a site location for senior meal services; and

WHEREAS, the City of Lancaster desires to continue to provide such meal services;

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

- Section 1. The City Council does hereby approve the terms and conditions of amendment 4, which modifies Amendment 3, Section 1 of the contract by and between the City and The Paper Plate by maintaining the contracted award per meal at \$4.25 in accordance with the amendment, which is attached hereto and incorporated herein by reference as Exhibit A.
- Section 2. The City Manager of the City of Lancaster, Texas, is hereby authorized to execute the contract.
- Section 3. The City Manager of the City of Lancaster is hereby authorized to cause the issuance of purchase orders to conform to this resolution.
- Section 4. Any prior Resolution of the City Council in conflict with the provisions contained in this Resolution are hereby repealed and revoked.
- Section 5. Should any part of this Resolution be held to be invalid for any reason, the remainder shall not be affected thereby, and such remaining portions are hereby declared to be severable.
- Section 6. This Resolution shall take effect immediately from and after its passage, and it is duly resolved.

DULY PASSED AND APPROVED by the City Council of the City of Lancaster, Texas, on this the 12th day of November 2012.

ATTEST:

APPROVED:

Dolle K. Shane, City Secretary

Marcus E. Knight, Mayor

APPROVED AS TO FORM:

Robert E. Hager, City Attorney

**AMENDMENT 4
FOOD SERVICE CONTRACT AGREEMENT
09-004 MEAL SERVICES**

**THE STATE OF TEXAS §
COUNTY OF DALLAS §**

This amendment is entered into between the City of Lancaster, a home rule city hereinafter referred to as *CITY*, and The Paper Plate hereinafter referred to as *CONTRACTOR*.

AGREEMENT

The Amendment changes the price set in Amendment 1 as follows.

- 1. Increase of per meal price as follows:**
 - a. Price Approved in Amendment 3 \$4.25
 - b. Requested Increase 0%
 - c. New Amount \$4.25
- 2. Extension of services (Renewal Option 3 – Year 4)**
 - a. December 8, 2012 to December 7, 2013.

AMENDMENT

This Agreement may only be amended by the written mutual agreement of both parties.
By signing below, you agree to the amendment of your original contract with the above terms. All original terms and conditions remain the same.

Executed this 12th day of November 2012.

CITY OF LANCASTER, TEXAS

THE PAPER PLATE

Opal Mauldin-Robertson, City Manager

Printed Name & Title

LANCASTER CITY COUNCIL

Item 4

Agenda Communication

November 12, 2012

Consider a resolution approving an amendment to the Economic Development Incentive Agreement by and between the City of Lancaster, LEDC and Argent-ProLogis, LLC and authorizing the City Manager to execute said amendment.

This request supports the City Council 2012-2013 Policy Agenda.

Goal: Quality Development

Background

In December 2004 the City of Lancaster, Lancaster Economic Development Corporation (LEDC) and Argent Development entered into an Infrastructure Incentive Agreement for Daniieldale Road extension, water and wastewater line extensions and drainage improvements. The agreement allowed for the establishment of a planned development park to include cross-dock warehouse, distribution, light manufacturing and office/corporate headquarters-showroom space. The incentive agreement was to reimburse the company with a return on their investment over a period of time not to exceed 20 years.

In 2006 Argent Development assigned the agreement to Argent-ProLogis for the construction of ProLogis 20/35 Park.

This amendment is to exclude approximately 67 acres of the service area from the agreement to allow for its development and occupancy as a distribution center pursuant to a separate economic development incentive agreement set forth in separate companion agreements between the City of Lancaster and Quaker Sales & Distribution, Inc.

The amendment will reduce the outstanding balance of repayment by \$1,209,526. Should the improvements within the service area expand the amendment allows for an additional reduction to the outstanding balance.

The outstanding balance subject to the agreement will be \$5,118,196.

Considerations

- **Operational** - The terms of this amendment provide a reduction to the outstanding balance owed by the City of Lancaster. The economic development incentive of this amendment will be passed on to Quaker Sales & Distribution, Inc. in a companion item.

- **Legal** – The resolution and agreement have been reviewed and approved as to form by the City Attorney. The original agreement included the Economic Development Corporation. The LEDC board approved the amendment at their November 8, 2012 meeting.
- **Financial** – The current balance owed to the company is approximately \$6.3 million. The balance will be reduced by \$1,209,526 providing a remaining balance of \$5,118,196.
- **Public Information** – There are no public information requirements associated with this item.

Options/Alternatives

- 1) Council may approve the item as presented
- 2) Council may reject the item

Recommendation

Staff recommends approval of the resolution as presented.

Attachments

- Resolution
- First Amendment
- LEDC Resolution
- Infrastructure Incentive Agreement
- Original Incentive Agreement

Submitted by:

Opal Mauldin Robertson, City Manager

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, APPROVING AN AMENDMENT TO THE ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT AND AUTHORIZING THE CITY MANAGER TO SIGN AN AMENDMENT TO THE INFRASTRUCTURE INCENTIVE AGREEMENT BETWEEN THE CITY OF LANCASTER, LEDC AND ARGENT-PROLOGIS, LLC; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Lancaster recognizes how important business and community development is to the vitality and growth of Lancaster; and

WHEREAS, in December of 2004, the City of Lancaster, the Lancaster Economic Development Corporation and Argent Development entered into an Infrastructure Incentive Agreement to allow for the development of an industrial park; and

WHEREAS, later, Argent Development assigned the agreement to its ProLogis-Argent, LLC (hereinafter "PROLOGIS"); and

WHEREAS, during the placement of an economic development client as Quaker Sales & Distribution, Inc., the original Economic Development Agreement with ProLogis require an amendment; and

WHEREAS, upon full review and consideration of the Agreement, and all matters related thereto, the City Council has determined that it is in the best interest of the City to amend such Agreement, which is attached hereto and incorporated herein by reference as Exhibit "A," under the terms and conditions provided therein.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS THAT.

SECTION 1. That the City of Lancaster approves the 1st Amendment to the Infrastructure Incentive Agreement which is attached hereto and incorporated herein as Exhibit A and the City Manager is hereby authorized to execute such amendment.

SECTION 2. That this resolution shall take effect immediately from and after its passage and it is so duly resolved.

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 12th day of November 2012.

ATTEST:

APPROVED:

Dolle K. Downe, City Secretary

Marcus E. Knight, Mayor

APPROVED AS TO FORM:

Robert E. Hager, City Attorney

STATE OF TEXAS §
 §
 § **AMENDMENT NO. 1 TO THE ECONOMIC**
 § **DEVELOPMENT INCENTIVE AGREEMENT**
 COUNTY OF DALLAS §

This Amendment No. 1 ("**Amendment**") to the Infrastructure Incentive Agreement ("**Agreement**"), by and between the City of Lancaster (the "**City**") and Argent Development GP, L.L.C., as assigned to Prologis & Argent LLC, successor by merger and name change to Prologis & Argent LP ("**Developer**"), and the Board of Directors of the Lancaster Economic Development Corporation, Lancaster, Texas ("**LEDC**"), is entered into this 12th day of November, 2012 (the "**Effective Date**"). The City, Developer and LEDC shall hereinafter be collectively referred to herein as, the "**Parties**").

RECITALS

WHEREAS, on or about December 3rd, 2004, the Parties hereto entered into the Agreement, wherein the City made economic development grants to Developer for the purposes of building, constructing and operating an industrial and retail business park within the City; and

WHEREAS, the Parties desire to amend the Agreement to remove a sixty seven (67) acre ± tract (the "**Removed Property**") from such Agreement, to allow for its future development and occupancy as a distribution center on such property, pursuant to separate economic development incentives set forth in that certain Economic Development Agreement dated of even date herewith, between the City and Quaker Sales & Distribution, Inc., a Delaware corporation (the "**Replacement Agreement**");

NOW THEREFORE, in consideration of the foregoing, and on the terms and conditions hereinafter set forth, the Parties agree as follows:

Section 1. Article I, "Definitions," of the Agreement is hereby amended by deleting the following definitions set forth therein, and replacing them in their entirety as follows:

(a) **1.2 "Act"** shall mean the Development Corporation Act, Chapter 501, Texas Local Government Code, as amended.

(b) **1.13 "Project Area"** shall mean the property legally described on Exhibit B to this Agreement.

(c) **1.15 "Project Costs"** shall mean the sum of: (a) the actual costs incurred by **DEVELOPER** to plan, design, permit, and construct the Infrastructure Improvements (excluding any Project-related costs expressly excluded from Project Costs by this Agreement), together with interest imputed or accrued at the rate of seven percent (7%) per annum, calculated from the Project Commencement to Completion, plus (b) interest on the amount in item (a) after Completion at the rate of seven percent (7%) per annum, compounded annually, until the cost estimates on Exhibit B are composed of cost estimates only, the parties acknowledging that interest shall not be compound on estimated costs that have not been actually

expended. Project Costs shall be calculated to include the actual costs incurred by or on behalf of **DEVELOPER** to plan, design, permit, and construct the Infrastructural Improvements as required by **CITY**.

(d) **1.22 “Serviced Area”** shall mean the tract of land north of Cedardale Drive and east of Houston School Road containing property defined herein, including the Project Area and the approximately 50 acre area planned for potential retail development north of and adjacent to the Project Area abutting Interstate Highway 20. The Serviced Area boundaries are shown on the site plan attached to this Agreement as Exhibit D.

Section 2. Section 22.1 of the Agreement is hereby amended by deleting the addresses set forth therein in their entirety, and replacing them with the following addresses:

CITY

City of Lancaster
211 North Henry Street
Lancaster, Texas 75146
Fax: (972) 227-4032
Attn: City Manager

With copy to:

Robert E. Hager
Nichols, Jackson, Dillard
Hager & Smith, L.L.P
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

LEDC

P.O. Box 399
103 Historic Town Square
Lancaster, Texas 75146
Fax: (972) 218-7057
Attn: Director

DEVELOPER

Prologis & Argent LLC
Attn: Ross Matthews
2501 N. Harwood Street
Ste 2450
Dallas, Texas 75201

With copy to:

Prologis, Inc.
Attn: Legal Department
4545 Airport Way
Denver, CO 80239

Section 4. The Agreement is hereby amended by deleting Exhibits B and D in their entirety, and replacing them with Exhibits 1 and 2, as designated below:

Exhibit 1: “EXHIBIT B - PROJECT PLAN”

Exhibit 2: “EXHIBIT D - SERVICED AREA BOUNDARIES”

Section 5. The outstanding balances of repayment or costs subject to the Agreement, as amended, on the effective date shall be reduced by \$1,209,526.00 [balance of payment is in Section 6]. In the event that Developer requests future economic development incentives with regard to an expansion of the building to be developed on the Removed Property, the parties will agree to an additional reduction of the outstanding balances of repayment or costs subject to the Agreement, based upon the same formula utilized to calculate the reduction set forth above.

Section 6. That the rest and remainder of the Agreement, except as amended herein, is hereby republished and ratified. This Amendment may be executed in facsimile or original counterparts, which taken together shall constitute one agreement. The Parties acknowledge and agree that as of the Effective Date, the outstanding balances of repayment or costs subject to the Agreement is \$5,118,196.00.

Section 7. The City acknowledges and agrees that the Replacement Agreement shall be freely assignable to Developer, its affiliates, successors and/or assigns, and shall be effective after five (5) business days written notice to the City. Furthermore, the City acknowledges and agrees that in the event the City terminates the Replacement Agreement prior to the expiration of its 10-year term, for any reason whatsoever, it shall deliver written notice of such termination to Developer, and, upon Developer's request, shall enter into an Economic Development Agreement for the Removed Property with Developer, or its successor or assign, on the same terms and conditions currently set forth therein, for the remaining term of the Replacement Agreement.

EXECUTED in single or multiple originals this the 12th day of November, 2012.

CITY OF LANCASTER

By: _____
Name: Opal Mauldin Robertson
Title: City Manager

PROLOGIS & ARGENT LLC

By: _____
Name: _____
Title: _____

**BOARD OF DIRECTORS OF THE LANCASTER
ECONOMIC DEVELOPMENT CORPORATION,
LANCASTER, TEXAS**

By:  _____
Name: Ric Peterson
Title: President

EXHIBIT 1

**EXHIBIT B
To Infrastructure Incentive Agreement**

PROJECT PLAN

**INFRASTRUCTURE IMPROVEMENTS SUMMARY SERVING APPROXIMATELY
206
ACRES OF OFFICE WAREHOUSE DISTRIBUTION AND 50 ACRES OF RETAIL
COMMERCIAL**

<u>Area</u>	<u>Estimated Project Costs</u>
--------------------	---------------------------------------

CITY Water/Sewer/Drainage

Danieldale Drive Extension
(including water/sewer, street
Lighting, landscaping, irrigation,
Signalization)

Engineering Fees/Design Surveys

Total Project Costs (excl. contingency)

Maximum amount to be reimbursed by **LEDC**

* See attached itemization prepared by Halff Associated, Inc.

* See Attached Legal Description of the Project Area

EXHIBIT 2

**EXHIBIT D
To Infrastructure Incentive Agreement**

SERVICE AREA BOUNDARIES

[See Attached]

EXHIBIT D
To Infrastructure Incentive Agreement
SERVICE AREA BOUNDARIES



RESOLUTION NO. 2012-03

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE LANCASTER ECONOMIC DEVELOPMENT CORPORATION OF LANCASTER, TEXAS, IN SUPPORT OF AN AMENDMENT TO THE ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE CITY OF LANCASTER, LEDC AND ARGENT-PROLOGIS, LLC FOR THE PROMOTION AND DEVELOPMENT OF NEW AND EXPANDED BUSINESS ENTERPRISES, AS AUTHORIZED BY STATE LAW; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Lancaster Economic Development Corporation recognizes how important business and community development is to the vitality and growth of Lancaster; and

WHEREAS, in December of 2004, the City of Lancaster, the Lancaster Economic Development Corporation and Argent Development entered into an Infrastructure Incentive Agreement (hereinafter "PROLOGIS") to allow for the development of an industrial park; and

WHEREAS, later, Argent Development assigned the agreement to its ProLogis-Argent, LLC; and

WHEREAS, during the placement of an economic development client as Quaker Sales & Distribution, Inc., the original Economic Development Agreement with ProLogis require an amendment; and

WHEREAS, LEDC was a signature to the original.

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE LANCASTER ECONOMIC DEVELOPMENT CORPORATION, THAT:

SECTION 1. That the Board of Directors of the Lancaster Economic Development Corporation approves the resolution and amendment which is attached hereto as Exhibit A.

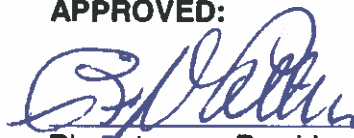
SECTION 2. That this resolution shall take effect immediately from and after its passage and it is so duly resolved.

DULY PASSED AND ADOPTED ON THIS 8TH DAY OF NOVEMBER, 2012.

ATTEST:


Angie Arenas, Executive Secretary

APPROVED:


Ric Peterson, President

APPROVED AS TO FORM:

Robert E. Hager, City Attorney

**INFRASTRUCTURE INCENTIVE AGREEMENT WITH THE CITY OF LANCASTER,
TEXAS and
ARGENT DEVELOPMENT, L.P. and
THE LANCASTER ECONOMIC DEVELOPMENT CORPORATION
DECEMBER 3, 2004**

This Incentive Agreement, pursuant to Resolutions passed and approved on November 29, 2004, is entered into by and among the **CITY OF LANCASTER**, a Texas municipal corporation of Dallas County, Texas (hereinafter called "**CITY**"); **ARGENT DEVELOPMENT GP, L.L.C.**, an entity organized in the State of Texas (hereinafter referred to as "**DEVELOPER**"); and **BOARD OF DIRECTORS OF THE LANCASTER ECONOMIC DEVELOPMENT CORPORATION, LANCASTER, TEXAS** (hereinafter called "**LEDC**");

WITNESSETH:

WHEREAS, DEVELOPER is in the process of acquiring the property (the "**Property**") containing approximately 206 acres in the **CITY** located in the southeast quadrant of I 20 and Houston School Road; and

WHEREAS, CITY and **LEDC** recognize the importance of **CITY'S** and **LEDC'S** continued role in economic development in the **CITY** of Lancaster planned for development as shown on the site plan attached as a portion of Exhibit A; and

WHEREAS, the CITY may provide incentives promoting economic development pursuant to Chapter 380 of the Texas Local Government Code. This statute authorizes loans and grants of a **CITY's** general funds, pursuant to a "program" to stimulate business and commercial activity in the municipality. In addition, the **CITY** is able to issue Revenue Bonds, to form special purpose districts, as well as to issue Certificates of Obligation ("**COs**") secured by the **CITY's** taxing power and/or secured by and payable from a limited pledge of surplus net revenues of certain designated revenue-producing facilities.

WHEREAS, by Resolution 35-95, dated August 28, 1995, pursuant to Section 4A of the Development Corporation Act of 1979 (Texas Civil Statutes Article 5190.6), as amended, (hereinafter called the "Act"), CITY created **LEDC** as a non-profit corporation in accordance with the Act, to promote development and redevelopment within the municipality and its vicinity and create new manufacturing and industrial facilities, distribution centers, warehouse facilities and related facilities, through the use of a sales tax, which development and redevelopment would not otherwise occur solely through private investment in the reasonably foreseeable future; and

WHEREAS, Section 2 (11) (A) of the Act authorizes the expenditure of 4A funds for costs of specific infrastructure improvements necessary for industry to locate on the Property, plus other costs incidental to those expenditures and obligations, consistent with the Project Plan, which expenditures and monetary obligations constitute "**Project Costs**", as defined in the Act; and

WHEREAS, on November 29, 2004, by Resolution No. 2004-11-101, the CITY adopted and approved a program (the "**Program**") pursuant to Chapter 380 of the Texas Local Government Code providing for loans and/or grants to stimulate certain economic development in the **CITY** of Lancaster, and a final Project Plan and a final Financing Plan defined hereunder and referred

to herein as "Project Plan" and "Financing Plan," providing for development of the Property funded, in part, by a grant under the Program; and

WHEREAS, pursuant to the **CITY's** charter, the Act, and applicable Texas Statutes, **CITY** has the authority to enter into agreements as the **CITY** considers necessary or convenient to implement the Project Plan and Financing Plan and to achieve the purposes of developing the Property; and

WHEREAS, pursuant to the Act and the bylaws of the Lancaster Economic Development Corporation, the **LEDC** has authority to enter into agreements as the **LEDC** considers necessary or convenient to implement the Project Plan and Financing Plan and to achieve the purposes of developing the Property; and

WHEREAS, on November 4, 2004, by Resolution No. 2004-06, **LEDC** adopted and approved participation in the development of the Property through a targeted infrastructure grant to **DEVELOPER**; and

WHEREAS, pursuant to said authority, **CITY** and **DEVELOPER** have entered into a Chapter 380 Agreement of even date herewith (the "Chapter 380 Agreement") providing for the grant to **DEVELOPER** of certain portions of ad valorem taxes paid on real property within the Project Area for various purposes related to economic development in the Project Area; and

WHEREAS, pursuant to said authority above, **CITY** and **LEDC** hereby intend to enter into a binding agreement with **DEVELOPER** for **DEVELOPER** to develop the Property as specified in the Project Plan, Financing Plan, and this Agreement; and

WHEREAS, **CITY**, by Resolution, dated November 29, 2004, authorized the Mayor of Lancaster or his designated representative to execute this Agreement on behalf of **CITY**, to bind **CITY** to the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual promises, covenants, obligations, and benefits contained in this Agreement, **CITY**, **LEDC**, and **DEVELOPER** hereby agree as follows:

ARTICLE I. DEFINITIONS

1.1 "CITY," "LEDC," and "DEVELOPER" shall have the meanings specified above.

1.2 "Act" shall mean the Development Corporation Act of 1979, as defined above and as may be amended from time to time.

* 1.3 "Ad Valorem Tax Grant" shall mean an economic development grant from **CITY** generated from the rebate to **DEVELOPER** of ad valorem taxes on real property located within the Project Area pursuant to the Chapter 380 Agreement.

1.4 "Agreement" shall mean this document by and among **CITY**, **LEDC** and **DEVELOPER**, which may be amended from time to time, pursuant to the provisions contained herein.

1.5 "Completion" shall mean construction of Infrastructural Improvements on the Property (and any adjacent property having utility easements granted to the CITY for public use), substantially in accordance with the Project Plan and this Agreement to the extent that the particular improvements can be used and maintained for its intended purpose, as certified by an engineer or other official of CITY with responsibility for inspecting and certifying such improvements.

1.6 "Financing Plan": shall mean the program for reimbursement of the Project Costs set forth in Exhibit C.

1.7 "First Scheduled Installment" shall mean the payment due under this Agreement in the amount of Five Hundred Thousand and No/100s Dollars (\$500,000), payable to DEVELOPER by LEDC in accordance with the Financing Plan.

1.8 "First Term" shall mean the ten (10) year period commencing on January 1 of the year after Qualified Building Completion, and continuing until December 31 ten (10) years thereafter.

1.9 "Grant Installment Approval" shall mean a written acknowledgement from LEDC or CITY to DEVELOPER that payment of the Second Scheduled Installment requested by the Grant Installment Notice is approved for reimbursement to DEVELOPER.

1.10 "Grant Installment Notice" shall mean a notice to LEDC and the CITY from DEVELOPER notifying CITY that DEVELOPER has successfully completed work on the Infrastructural Improvements and Qualified Building Completion has occurred, accompanied by customary documentation reflecting completion of the Project and building(s), the cost of such work, and lien waivers and/or subcontractor releases reflecting proof of payment for such work, and requesting payment of the Second Scheduled Installment.

1.11 "Infrastructural Improvements" shall mean the public regional storm drainage and detention system (referred to as "online detention pond #1 and #2" on Exhibit A), sanitary sewer system, water system, off-site utility trunk connections, and streets (with related lighting, landscaping, and signalization), described in Exhibits B and B-1 to be constructed by DEVELOPER pursuant to this Agreement.

* 1.12 "Project" shall have the meaning specified in paragraph 3.1 of this Agreement, and as more specifically detailed in the Project Plan and Financing Plan as (either or both) may be amended from time to time.

1.13 "Project Area" shall mean the Property together with adjoining land of up to [67 acres] which may be purchased in the future by DEVELOPER for development of an industrial park.

1.14 "Project Commencement" shall mean the issuance of a development permit or permits to DEVELOPER for, and commencement of on-site construction of, the Project improvements.

1.15 "Project Costs" shall mean the sum of: (a) the actual costs incurred by DEVELOPER to plan, design, permit, and construct the Infrastructural Improvements

(excluding any Project-related costs expressly excluded from Project Costs by this Agreement), together with interest imputed or accrued at the rate of seven percent (7%) per annum, calculated from the Project Commencement to Completion, plus (b) interest on the amount in item (a) after Completion at the rate of seven percent (7%) per annum, compounded annually, until reimbursement in full of **DEVELOPER** as provided in this Agreement. The Project Costs estimate on Exhibit B is composed of cost estimates, only. Project Costs shall be calculated to include the actual costs incurred by or on behalf of **DEVELOPER** to plan, design, permit, and construct the Infrastructural Improvements as required by **CITY**.

1.16 "Project Plan" shall mean the final Project Plan for development of infrastructure to serve the Property and other land in the vicinity of the Property, as shown in Exhibit B and as may be amended time to time by **OWNER**, **LEDC**, and **CITY**.

1.17 "Property" shall mean the approximately 206 acres of real property more particularly described in Exhibit A.

1.18 "Qualified Building Completion" shall mean the issuance of a certificate of substantial completion (or multiple certificates) by the inspecting architect for the building(s) for a shell building or buildings in the Project Area containing an aggregate minimum enclosed area of 650,000 square feet.

1.19 "Sales Tax Grant" shall mean an economic development grant from **LEDC** and **CITY** generated from sales tax payments by any tenants or corporate users occupying buildings in the Serviced Area. The Sales Tax Grant shall be calculated from official records maintained by **CITY**, based upon **CITY'S** sales tax receipts from sales operations in the Serviced Area. The amount to be rebated shall equal one fourth (1/4) of one percent (1%) of taxable sales during the accounting period in the Serviced Area, subject to collection of such sales taxes by **CITY** from the party responsible for payment thereof, and shall be payable on a quarterly basis on the last day of each January, April, July, and October during the term hereof.

1.20 "Second Scheduled Installment" shall mean the payment due under this **AGREEMENT** in the amount of One Million and No/100s Dollars (\$1,000,000), payable to **DEVELOPER** by **LEDC** in accordance with the Financing Plan.

1.21 "Second Term" shall mean the ten (10) year period commencing on January 1 of the year after expiration of the First Term and continuing until December 31 ten (10) years thereafter.

1.22 "Serviced Area" shall mean the tract of land north of Cedardale Drive and east of Houston School Road containing approximately 323 acres, including the Project Area and the approximately 50 acre area planned for potential retail development north of and adjacent to the Project Area abutting Interstate Highway 20. The Serviced Area boundaries are shown on the site plan attached to this Agreement as Exhibit D.

Singular and Plural: Words used herein in the singular, where the context so permits, also includes the plural and vice versa, unless otherwise specified.

ARTICLE II. REPRESENTATIONS

2.1 No General Obligation Bonds. GENERAL OBLIGATION BONDS: CITY, LEDC AND DEVELOPER represent that they understand and agree that CITY shall not issue any general obligation bonds to cover any costs directly or indirectly related to DEVELOPER's improvement of the Property under this Agreement.

2.2 CITY Authority. CITY represents to DEVELOPER that as of the date hereof CITY has authority to carry out obligations contemplated by this Agreement.

2.3 LEDC Authority. LEDC represents to DEVELOPER that, with the CITY Council's concurrence, LEDC has the authority to carry obligations contemplated by this Agreement.

2.4 DEVELOPER Standing and Authority. DEVELOPER represents to CITY and to LEDC that DEVELOPER is an entity organized in the State of Texas; that DEVELOPER has the authority to enter into this Agreement and to perform the requirements of this Agreement; that DEVELOPER's performance under this Agreement shall not violate any applicable judgment, order, law or regulation; that DEVELOPER's performance under this Agreement shall not result in the creation of any claim against CITY for money or performance, any lien, charge, encumbrance or security interest upon any asset of CITY; that DEVELOPER shall have sufficient capital to perform all of its obligations under this Agreement when it needs to have said capital; and that DEVELOPER has contracts to purchase the Property as of the date of execution of this Agreement.

2.5 No Third Party Consents. CITY, LEDC, and DEVELOPER represent each to the others that the execution, delivery, and performance of this Agreement on its part does not require consent or approval of any person that has not been obtained.

2.6 Continuing Cooperation. CITY, LEDC, and DEVELOPER represent each to the other that each shall make every reasonable effort to expedite the performance of the obligations under this Agreement and acknowledge that the successful performance of this Agreement requires the continued cooperation of each.

ARTICLE III. THE PROJECT

3.1 The Project. The Project shall constitute and include the design and construction of Infrastructural Improvements (required for the development of approximately 3,215,000 square feet of industrial distribution space and related offices in the Project Area and approximately 300,000 square feet of general retail and 48,000 square feet of restaurants planned by third parties on the adjoining 50 acres of land), to be constructed by DEVELOPER within the Property and, as needed, on adjacent property within easements or right-of-way acquired by the CITY for use in the Project. CITY acknowledges acquisition of any off-site right-of-way or easements for the planned Daniel Dale Road extension and related utility facilities required to complete the Project shall be the responsibility of CITY, and that CITY shall acquire such off-site right-of-way and easements promptly, including condemnation proceedings, following execution of this Agreement in accordance with applicable law. Road right-of-way shall be conveyed to CITY in accordance with applicable law, and DEVELOPER shall pay to the court registry in the court in which the condemnation case is pending or reimburse CITY for CITY'S costs of appraisal and acquisition not to exceed the sum of \$100,000.00. The cost of acquiring right-of-way for public roads shall not be included in Project Costs.

3.2 Construction of Infrastructural Improvements. All contracts for construction of the Infrastructural Improvements shall be bid, awarded and caused to be constructed by **DEVELOPER** in compliance with all applicable laws.

3.3 Construction of Qualified Building(s). In order to qualify for receipt of the Second Scheduled Installment, **DEVELOPER** must cause the Qualified Building Completion to occur on or before thirty (30) months following **CITY'S** final acceptance of the Infrastructural Improvements for maintenance or other purposes as provided by applicable law or by this Agreement.

3.4 Financing. **DEVELOPER** shall be responsible for funding the Project Costs, subject to reimbursement in accordance with this Agreement. The funding of the **CITY** participation in the Project Costs shall be in the amounts and as specifically scheduled in the Financing Plan. **DEVELOPER** may use any part or all of the Property as collateral for the construction loan or loans as required for the initial financing of the Project and related buildings. **CITY** and **LEDC** agree to use available funds as provided in the Financing Plan, up to the maximum amount required herein, to reimburse **DEVELOPER** for Project Costs. The payments made to **DEVELOPER** pursuant to this Agreement are not intended to reimburse **DEVELOPER** for all Project Costs incurred in connection with performing its obligations under this Agreement. It is anticipated that the final Project Costs shall exceed such reimbursements, and **DEVELOPER** shall be responsible for payment of all such excess costs.

ARTICLE IV. DUTIES AND OBLIGATIONS OF DEVELOPER

4.1 Program Compliance. **DEVELOPER** shall comply with all applicable provisions of the Program. In the event of a conflict between the Program and this Agreement, the terms of this Agreement shall control.

4.2 Completion of Project. Subject to Article VI, **DEVELOPER** agrees to complete, or cause to be completed, the Project in accordance with the terms of this Agreement. **DEVELOPER** agrees to provide, or cause to be provided, all materials, labor, and services for completing the Project. **DEVELOPER** also agrees to obtain or cause to be obtained all necessary permits and approvals from **CITY** and/or all other governmental agencies having jurisdiction over the construction of improvements to the Property (and any adjacent property having utility easements granted to the **CITY** for public use). **DEVELOPER** agrees to cause the construction of the Infrastructural Improvements to be performed substantially in accordance with the approved plans and specifications therefor.

4.3 Project Planning. **DEVELOPER** shall prepare, or cause to be prepared plans and specifications for the Infrastructural Improvements. **DEVELOPER** shall not commence any construction on the Project until the plans and specifications have been approved in writing by the appropriate department of **CITY**. For purposes of this Section 4.3, letters of certification or acceptance issued by the **CITY** or any affiliated utility entity shall constitute written approval of the **CITY**.

4.4 Project Work Bonds. Prior to beginning construction on the Project, **DEVELOPER** shall cause its general contractor or general contractors to provide satisfactory credit information or bank commitment letters to successfully complete the Project; otherwise, a payment and performance bond will be required in amounts required by applicable law.

DEVELOPER shall obtain said bond in the event the general contractor or general contractors fail to provide satisfactory credit support or procure said bond.

4.5 Periodic Reporting. **DEVELOPER** also agrees to provide periodic reports of such construction to **CITY** and to **LEDC** upon reasonable request. **DEVELOPER** shall cooperate with **CITY** and **LEDC** in periodically providing all necessary information to **CITY** and to **LEDC** in order to assist **CITY** and **LEDC** in complying with this Agreement, covering the Infrastructural Improvements as well as the **DEVELOPER**'s progress on building construction, marketing and leaseup status.

4.6 Permits, Impact Fees, and Waiver of Impact Fees. **DEVELOPER** shall be responsible for paying, or causing to be paid, to **CITY** and all other governmental agencies the cost of all applicable permit fees, licenses and utility impact fees (water and sanitary sewer) required for construction of the Project. **DEVELOPER** shall not be obligated to pay, directly or indirectly, for any traffic/roadway improvements in connection with its platting of the Property, construction and development of any improvements on the Property or Project Area, use of the Property or development of the Project Area (collectively, "Initial Improvements"), except as set forth in Exhibits B and B-1 and **CITY** hereby waives any such obligations. Notwithstanding this, **CITY** reserves the right, other than in relation to the Initial Improvements, to provide for resurfacing or reconstruction of road right-of-way improvements in accordance with applicable law. **CITY** hereby grants to **DEVELOPER** a development credit against roadway impact fees equal to the total roadway impact fees assessed for the Project Area. **CITY** waives infrastructure inspection fees, if any, chargeable during **DEVELOPER**'s development of the Property and the Project Area.

4.7 Utility Charges During Project Construction. **DEVELOPER** shall pay monthly rates and use charges for all utilities (such as water, electricity, and sewer services) used by **DEVELOPER** in regard to the development of the Property for so long as **DEVELOPER** owns those areas.

4.8 Project Costs Reporting. **DEVELOPER** shall submit a written report to **CITY** and **LEDC** no later than ninety (90) days following the end of the fiscal year in which the construction of Infrastructural Improvements was completed, reflecting and itemizing all Project Costs.

4.9 Code Compliance. **DEVELOPER** shall comply with the **CITY**'s Development Code regarding the development of the Project, as in effect on the date of the approval of plans and specifications.

4.10 Approvals. **CITY** and **LEDC** shall not unreasonably withhold approval on requests from **DEVELOPER** on matters under this Agreement.

ARTICLE V. REIMBURSEMENTS TO DEVELOPER

5.1 First Scheduled Installment. Upon commencement of construction of Infrastructural Improvements, **DEVELOPER** shall notify **CITY** and **LEDC** in writing, including with such notification **DEVELOPER**'S notice to proceed issued to **DEVELOPER**'S general contractor for the Project. After receiving such notice and verifying commencement of on-site construction, **LEDC** shall issue payment of the First Scheduled Installment to **DEVELOPER** in accordance with the Financing Plan.

5.2 Second Scheduled Installment. Upon Completion of the Project and Qualified Building Completion, **DEVELOPER** shall submit to **CITY** the Grant Installment Notice and **CITY** shall promptly review such notice and either notify **DEVELOPER** of deficiencies in the notice or issue its Grant Installment Approval. Within ten (10) business days after issuance of the Grant Installment Approval by **CITY**, **DEVELOPER** shall receive the Second Scheduled Installment in the amount of One Million and No/100 Dollars (\$1,000,000) in accordance with the Financing Plan.

5.3 Sales Tax Grant.

(a) From and after the generation of municipal sales tax revenue from sales operations within the Serviced Area, **CITY** shall issue payment of the Sales Tax Grant to **DEVELOPER** in accordance with the Financing Plan for application to the reimbursement of the Project Costs. If such sales operations shall commence on any portion of the Serviced Area outside the Project Area, **CITY** shall notify **DEVELOPER** of such commencement and the schedule for commencement of the Sales Tax Grant. If such sales operations shall commence on any portion of the Project Area, **DEVELOPER** shall notify **CITY** and **LEDC** of such commencement and the schedule for commencement of the Sales Tax Grant. **CITY** shall pay Sales Tax Grant payments quarterly, on the last day of January, April, July, and October of each year after commencement of sales tax remittances to **CITY**, commencing with the first such installment date after initial sales tax remittances to **CITY**.

(b) Subject to subparagraph (c), below, the Sales Tax Grant shall be payable by **CITY** to **DEVELOPER** until the earlier to occur of the following events: (i) reimbursement in full to **DEVELOPER** of the Project Costs, or (ii) the expiration of the Second Term. **CITY** may verify **DEVELOPER'S** accounting of the Project Costs in accordance with Article X of this Agreement. **DEVELOPER** shall respond to written requests from **CITY** and/or **LEDC** for current information concerning **DEVELOPER'S** accounting of the Project Costs for the purpose of ascertaining the remaining unreimbursed balance of the Project Costs periodically during the term of this Agreement.

(c) From and after January 1, 2012, continuation of the Sales Tax Grant derived from sales tax revenues from acreage in the Serviced Area not acquired by **DEVELOPER** shall be subject to and conditioned upon commencement of construction on building(s) in the Project Area with aggregate enclosed areas equal to or exceeding the following minimum aggregate areas resulting in the following cumulative square footage (as reflected on **DEVELOPER'S** building permit applications):

<u>Cumulative Building Area (minimum)</u>	<u>Commenced on or before</u>
1,100,000 square feet	December 31, 2011
1,850,000 square feet	December 31, 2016
2,850,000 square feet	December 31, 2021

In the event the Sales Tax Grant is discontinued in any period due to the failure of the condition stated in this subparagraph (c), no Sales Tax Grant shall accrue during such period nor be payable to **DEVELOPER**, and such Sales Tax Grant shall recommence to

accrue only following **DEVELOPER's** subsequent satisfaction of the construction commencement minimums. In no event shall **DEVELOPER's** failure to commence construction on buildings prior to any of the commencement deadlines stated above be construed as a default under this Agreement.

5.4 Project Costs Reimbursement. In order to determine when the Project Costs are fully reimbursed for purposes of Section 5.3, funds from the Ad Valorem Tax Grants and Sales Tax Grants received by **DEVELOPER** under this Agreement and the Chapter 380 Agreement shall be deemed to have been reimbursed to **DEVELOPER** in accordance with the following schedule:

(a) **Ad Valorem Tax Grant.** During the First Term, 20/90ths of the Ad Valorem Tax Grant paid to **DEVELOPER** under the Chapter 380 Agreement shall be allocated to reimbursement of the Project Costs, until the Project Costs are paid in full. During the Second Term, all of the Ad Valorem Tax Grant paid to **DEVELOPER** under the Chapter 380 Agreement shall be applied to reimbursement of the Project Costs.

(b) **Sales Tax Grant.** During the First and Second Terms, all of the Sales Tax Grant shall be allocated to reimbursement of the Project Costs until the Project Costs are paid in full.

All funds received by **DEVELOPER** for application to the Project Costs shall be applied first to interest payments or accruals, second to principal outstanding.

ARTICLE VI. INSURANCE

6.1 Construction Period Insurance Requirements. **DEVELOPER**, or **DEVELOPER's** contractor, shall obtain and maintain in full force and effect during the construction of all Infrastructural Improvements, and any extension hereof, at **DEVELOPER's** or **DEVELOPER's** general contractor's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A or better by A.M. Best Company and/or otherwise acceptable to **CITY**, in the following types and minimum amounts:

	<u>Type</u>	<u>Amount</u>
(1)	Worker's Compensation & Statutory Employer's Liability	\$500,000/\$500,000/\$500,000
(2)	Comprehensive General Liability (Including Broad Form Coverage, Contractual Liability, Bodily and Personal Injury, and Completed Operations	Combined limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate or its equivalent in umbrella or excess liability coverage
(3)	Business Automobile Liability (any auto, including employer's non-owned and hired auto coverage)	\$1,000,000 combined single limit per occurrence

6.2 Certificates. **CITY** shall be entitled, upon request and without expense, to receive copies of the certificates of insurance on all policies required under this Agreement.

6.3 Notices of Cancellation or Modification. DEVELOPER shall notify CITY in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty (30) days prior to the change, or ten (10) days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to CITY in accordance with Section 22.1.

6.4 Indemnification. DEVELOPER shall also indemnify CITY, LEDC, and all other PARTICIPATING ENTITIES and their respective officials and employees from and against any and all claims, losses, damages, causes of actions, suits and liabilities arising out of DEVELOPER's and DEVELOPER's general contractor's actions related to the construction of the Infrastructural Improvements.

6.5 Contractor's Indemnity. DEVELOPER shall also require its general contractor or general contractors working on this Project to indemnify CITY, LEDC, and all other Participating Entities and their respective officials and employees from and against any and all claims, losses, damages, causes of actions, suits and liabilities arising out of their actions related to the performance of this Agreement, utilizing the same indemnification language contained herein, in its entirety.

ARTICLE VII. DEFAULT AND TERMINATION

7.1 Default by DEVELOPER. In the event that DEVELOPER fails to commence construction of the Project, fails to complete construction of the Project, or fails to perform any other obligation pursuant to the terms of this Agreement, CITY and/or LEDC may terminate this Agreement if DEVELOPER does not take adequate steps to cure its monetary default within thirty (30) calendar days after receiving written notice from CITY and/or LEDC, or cure its non-monetary default within ninety (90) days after receiving written notice from CITY and/or LEDC requesting the failure be cured. However, no default shall occur if DEVELOPER commences such performance to cure the default within the ninety (90) days and thereafter diligently pursues its completion. But, in the event that DEVELOPER is unable to ultimately cure such default (or otherwise satisfactorily resolve) and as the exclusive remedy of CITY and/or LEDC, DEVELOPER shall not receive any further reimbursement payments under this Agreement for the construction of Infrastructural Improvements for any Phase under development at the time of the incurable default; EXCEPT that no refund is due if DEVELOPER, with CITY's and LEDC's written consent, assigns its remaining obligations under this Agreement to a qualified party who is willing and capable of completing DEVELOPER's obligations under this Agreement, pursuant to Article XII herein.

7.2 Failure to Furnish Project Documentation. Notwithstanding Section 7.1 above, in the event DEVELOPER fails to furnish CITY and LEDC any documentation required in Article IV herein within thirty (30) business days following the written request for same, then DEVELOPER shall be in default of this Agreement.

ARTICLE VIII. SITE INSPECTION

DEVELOPER shall allow CITY and/or LEDC reasonable access to the Property owned or controlled by DEVELOPER for inspections during and upon completion of construction of the

Project and to documents and records necessary for CITY and/or LEDC to assess DEVELOPER's compliance with this Agreement.

ARTICLE IX. LIABILITY

9.1 Employee Compensation. As between CITY, LEDC or any Participating Entity and DEVELOPER, DEVELOPER shall be solely responsible for compensation payable to any employee or contractor of DEVELOPER, and none of DEVELOPER's employees or contractors will be deemed to be employees or contractors of CITY, LEDC or any Participating Entity as a result of the Agreement.

9.2 Exculpation of CITY and LEDC Employees. To the extent permitted by Texas law, no director, officer, employee or agent of CITY, LEDC or of any other Participating Entity shall be personally responsible for any liability arising under or growing out of this Agreement.

ARTICLE X. EXAMINATION OF RECORDS

10.1 Right to Inspect Books and Records. CITY and LEDC reserves the right to conduct examinations, during regular business hours and following notice to DEVELOPER by CITY or LEDC, of the books and records related to this Agreement (including such items as contracts, correspondence, copy, books, accounts, billings and other information related to the performance of DEVELOPER's services hereunder) no matter where books and records are located. CITY and LEDC also reserves the right to perform any and all additional audit tests relating to DEVELOPER's services, provided that such audit tests, conducted at times mutually agreeable to both CITY/LEDC and DEVELOPER, are related to those services performed by DEVELOPER for CITY and LEDC under this Agreement. These examinations shall be conducted at the offices maintained by DEVELOPER.

10.2 Preservation of Books and Records. All applicable records and accounts of DEVELOPER, together with all supporting documentation, shall be preserved in Dallas County, Texas, by DEVELOPER throughout the term of this Agreement and for twelve (12) months after the termination of this Agreement, then transferred, if requested by CITY or LEDC, to LEDC or CITY for retention.

10.3 Discrepancies. Should LEDC discover errors in internal controls or in record keeping associated with the Project, DEVELOPER shall correct such discrepancies either upon discovery or within a reasonable period of time, not to exceed sixty (60) days after discovery, and notification by CITY or LEDC to DEVELOPER of such discrepancies.

ARTICLE XI. NON-WAIVER

11.1 Amendments. Any provision of this Agreement may be amended or waived if done in writing and is signed by CITY, through a resolution passed and approved by its CITY Council, LEDC, and DEVELOPER.

11.2 Course of Dealing. No course of dealing on the part of CITY, LEDC, or DEVELOPER nor any failure or delay by CITY, LEDC, or DEVELOPER in exercising any right, power, or privilege under this Agreement shall operate as a waiver of any right, power or privilege owing under this Agreement.

ARTICLE XII. ASSIGNMENT

12.1 Binding Effect. All covenants and agreements contained herein by **CITY** and/or **LEDC** shall bind their successors and assigns and shall inure to the benefit of **DEVELOPER** and their successors and assigns.

12.2 Assignments by CITY and/or LEDC. **CITY** and/or **LEDC** may not assign their rights and obligations under this Agreement to any governmental Entity without prior consent of **DEVELOPER**.

12.3 Assignments by DEVELOPER.

(a) Prior to completion of the Project, **DEVELOPER** may sell or transfer its rights and obligations under this Agreement only with written consent of **CITY** or **LEDC**, with such consent not being unreasonably withheld, conditioned, or delayed for any proposed assignment to a successor in title to any portion of the Project Area. This restriction on **DEVELOPER**'s rights to sell or transfer is subject to the right to assign as provided in Subsections (b) and (c) below.

(b) Any restrictions herein on the transfer or assignment of **DEVELOPER**'s interest in this Agreement shall not apply to and shall not prevent the assignment of this Agreement to an affiliate as well as any corporation or other entity with which **DEVELOPER** may merge or consolidate or that may succeed to a controlling interest in the business of **DEVELOPER** or in which **DEVELOPER** owns more than a twenty percent (20%) equity interest; nor shall the foregoing apply to or prevent **DEVELOPER** from assigning the proceeds of this Agreement to a lending institution or other provider of capital in order to obtain financing for the Project. In no event, however, shall **CITY** or **LEDC** be obligated in any way to the aforementioned financial institution or other provider of capital except as provided herein. This Article does not require **DEVELOPER** to obtain consent of **CITY** or **LEDC** for the sale of land to developers or sites to corporate users for the construction of retail or industrial facilities.

(c) After completion of the Project, it is intended by the parties hereto that the Ad Valorem Tax Grants provided in Article V hereof may be assigned by **DEVELOPER** in whole or in part to successor owners of property in the Project Area. **DEVELOPER** shall give **CITY** notice of such assignments pursuant to Article XXII below. This Agreement is, to the extent provided by law, intended to bind the **CITY** to make such grants to each successor or assignee of the **DEVELOPER** without the consent or approval, or any other action, of the **CITY**.

(d) Each transfer or assignment to which there has been consent, pursuant to Subsection (a), shall be by instrument in writing, in form reasonably satisfactory to **CITY** and **LEDC**, and shall be executed by the transferee or assignee who shall agree in writing for the benefit of **CITY** and **LEDC** and **CITY/LEDC** to be bound by and to perform the terms, covenants and conditions of this Agreement. Four (4) executed copies of such written instrument shall be delivered to **CITY** and **LEDC**. Failure to first obtain in writing **CITY** and **LEDC**'s consent, or failure to comply with the provisions herein contained, shall operate to prevent any such transfer or assignment from becoming effective.

12.4 Writing Required. Any work or services contracted herein shall be contracted only by written contract or agreement and, unless CITY or LEDC grants specific waiver in writing, shall be subject by its terms, insofar as any obligation of CITY or LEDC is concerned, to each and every provision of this Agreement. Compliance by DEVELOPER's subcontractors with this Agreement shall be the responsibility of DEVELOPER's general contractor.

12.5 Exculpation of CITY and LEDC. CITY and LEDC shall in no event be obligated to any third party, including any contractor or consultant of DEVELOPER, for performance of work or services under this Agreement.

12.6 Effect of Consent to Assignment. Should CITY and LEDC approve the assignment or transfer of this Agreement, DEVELOPER shall be released from such duties and obligations.

12.7 No Waivers Implied. No provision of this Agreement shall be deemed to have been waived by CITY or LEDC unless such waiver is in writing and is approved by CITY Council in the form of a duly passed resolution.

ARTICLE XIII. CONFLICT OF INTEREST

LEDC and DEVELOPER each warrant and certify, and this Agreement is made in reliance thereon, that they, their officers, employees and agents are neither officers nor employees of CITY.

ARTICLE XIV. ENTIRE AGREEMENT

14.1 Final Agreement. This written Agreement, together with the Chapter 380 Agreement executed contemporaneously herewith, embodies the final and entire agreement between the parties hereto and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties.

14.2 Exhibits. The exhibits attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein, except that if there is a conflict between an exhibit and a provision of this Agreement, the provision of this Agreement shall prevail over the exhibit.

ARTICLE XV. CHANGES AND AMENDMENTS

15.1 Writing Required. Except when the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall be by amendment in writing executed by CITY, LEDC and DEVELOPER and evidenced by passage, if required, of a subsequent resolution of the CITY Council of CITY, as to CITY's approval.

15.2 Changes in Applicable Laws. It is understood and agreed by the parties hereto that changes in local, state and federal rules, regulations or laws applicable to CITY/LEDC and DEVELOPER's services hereunder ("Applicable Laws") may occur during the term of this Agreement and that any such changes shall be automatically incorporated into this Agreement without written amendment hereto and shall become a part hereof as of the effective date of the rule, regulation or law. No retroactive measures will be required for completed work or services performed in accordance with known Applicable Laws.

ARTICLE XVI. SEVERABILITY

If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the charter, code, or ordinances of **LEDC** or **CITY**, then and in that event it is the intent of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein. It is also the intent of the parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a similar clause or provision as may be possible, legal, valid and enforceable.

ARTICLE XVII. INDEPENDENT CONTRACTORS

17.1 **No Agency.** It is expressly understood and agreed by all parties hereto that in performing their services hereunder, **DEVELOPER** at no time will be acting as agent of the **CITY** and that all consultants or contractors engaged by **DEVELOPER** shall be independent contractors of **DEVELOPER**. The parties hereto understand and agree that **CITY** shall not be liable for any claims that may be asserted by any third party occurring in connection with services performed by **DEVELOPER** under this Agreement unless any such claims are due to the fault of the **CITY**.

17.2 **Limit on Authority.** The parties hereto further understand and agree that no party has authority to bind the others or to hold out to third parties that it has the authority to bind the others.

ARTICLE XVIII. LEGAL AUTHORITY

Each persons executing this Agreement on behalf of the **CITY**, **LEDC** and **DEVELOPER**, represents, warrants, assures and guarantees that he has full legal authority to (i) execute this Agreement on behalf of **CITY**, **LEDC** and/or **DEVELOPER**, respectfully, and (ii) to bind **CITY**, **LEDC** and/or **DEVELOPER** to all of the terms, conditions, provisions and obligations herein contained.

ARTICLE XIX. VENUE AND GOVERNING LAW

19.1 **Choice of Law.** THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS.

19.2 **Venue.** Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in Dallas County, Texas.

ARTICLE XX. TAXES AND PERMITS

DEVELOPER shall pay, on or before their respective due dates, to the appropriate collecting authority all Federal, State, and local taxes that are now or may hereafter be levied upon the Property or upon **DEVELOPER** or the business conducted on the Property, or upon any of **DEVELOPER**'s property used in connection therewith, including employment taxes; and **DEVELOPER** shall maintain in current status all Federal, State, and local licenses and permits normally required for the operation of the business conducted by **DEVELOPER**.

ARTICLE XXI. PARTIES' REPRESENTATION

This Agreement has been jointly negotiated by the **CITY, LEDC** and **DEVELOPER** and shall not be construed against a party because that party may have primarily assumed responsibility for the drafting of this Agreement.

ARTICLE XXII. NOTICE

22.1 Addresses. Any notice sent under this Agreement shall be written and mailed with sufficient postage, sent by certified mail, return receipt requested, documented facsimile or delivered personally to an officer of the receiving party at the following addresses:

CITY

City of Lancaster
211 North Henry Street
Lancaster, Texas 75146
FAX: (972) 227-4032
Attn: City Manager

LEDC

P. O. Box 399
103 Historic Town Square
Lancaster, Texas 75146
FAX: (972-218-7057)
Attn: Director

With copy to:

City of Lancaster
211 North Henry Street
Lancaster, Texas 75146
FAX: (972) 227-4032
Attn: City Attorney

DEVELOPER

c/o Argent Development, L.P.
5949 Sherry Lane, Suite 1000
Dallas, Texas 75225
FAX: (214) 361-5032
Attn: Chairman

22.2 Delivery. Each party may change its address by written notice in accordance with this Article. Any communication delivered by facsimile transmission shall be deemed delivered when receipt of such transmission is received if such receipt is during normal business hours or the next business day if such receipt is after normal business hours. Any communication so delivered in person shall be deemed received when receipted for by or actually received by an officer of the party to whom the communication is properly addressed. All notices, requests or consents under this Contract shall be (a) in writing, (b) delivered to a principal officer or managing entity of the recipient in person, by courier or mail or by facsimile, telegram, telex, cablegram or similar transmission, and (c) effective two days following deposit in the U.S. Mail, postage paid, registered or certified, return receipt requested, properly addressed to the addressee, or effective upon confirmed facsimile transmission to the addressee at the facsimile number provided herein. Whenever any notice is required to be given by applicable law or this Contract, a written waiver thereof, signed by the person entitled to notice, whether before or after

the time stated therein, shall be deemed equivalent to the giving of such notice. Each party shall have the right from time to time and at any time to change its address by giving at least 15 days' written notice to the other party.

ARTICLE XXIII. CAPTIONS

All captions used herein are only for the convenience of reference and shall not be construed to have any effect or meaning as to the agreement between the parties hereto.

ARTICLE XXIV. TERM

The term of this Agreement shall commence on November 30, 2004 and end on the date which is the earlier to occur of the following: (i) the date **DEVELOPER** receives the final reimbursement payment by **CITY** or **LEDC** for Project Costs; or (ii) the date this Agreement is terminated as provided in Article VII; provided that any existing warranties on the Project shall survive, if applicable, termination of this Agreement.

IN WITNESS THEREOF, the parties hereto have caused this instrument to be duly executed this 3rd day of December, 2004.

CITY:

CITY OF LANCASTER, TEXAS

By: 

Joe Tillotson, Mayor

By: 

Jim Landon, City Manager

DEVELOPER:

ARGENT DEVELOPMENT GP, L.L.C.,
a Texas limited liability company

By: 

Name: C.E. Cornutt

Title: President

ATTEST:


City Secretary

Approved as to form:


Name: Robert Hager, City Attorney

LEDC:

Lancaster Economic Development Corporation,
A chartered development corporation


By: 
Name: EARL JEFFERSON
Title: BOARD PRES.

EXHIBIT Schedule

EXHIBIT A: Property and Site Plan

EXHIBIT B: Project Plan - Infrastructural Improvements and Construction Schedule

EXHIBIT B-1: Project Plan Preliminary Specifications

EXHIBIT C: Financing Plan – Schedule of Reimbursements

EXHIBIT D: Serviced Area Boundaries

EXHIBIT A
To Infrastructure Incentive Agreement
PROPERTY

144-acre Tract

The legal description for the above acreage is further described in the survey dated May 25, 2004 by Brockette Davis Drake.

44-acre Tract

The legal description for the above acreage is further described in the survey dated May 25, 2004 by Brockette Davis Drake.

17-acre Tract

The legal description for the acreage is further described in the survey dated August 16, 2004 by Halff Associates.

TRACT 1

Being a tract of land situated in the N.P. Pierce Survey Abstract Number 1132, City of Lancaster, Dallas County, Texas and being a portion of that certain 144.651 acres of land conveyed to Lancaster 260 Partnership by Instrument of record in Volume 84074, Page 3388, Dallas County Deed Records, and being more particularly described as follows:

Beginning at a 5/8" iron rod set in the easterly right-of-way line of Houston School Road (100' R.O.W.), same being the most westerly southwest corner of said Lancaster 260 Partnership tract, same also being in the northerly line of that certain 17.50 acre tract of land conveyed to James Belton Hall, et al, by Instrument of record in Volume 88010, Page 1250, Dallas County Deed Records;

THENCE, North 00° 03' 57" East, leaving the northerly line of said 17.50 acre tract and along said easterly right-of-way line, a distance of 1197.97 feet to a 5/8" iron rod set for corner;

THENCE, North 00° 06' 01" West, continuing along said easterly right-of-way line, a distance of 41.15 feet to a 5/8" iron rod set for corner, same being in the southerly line of a tract of land conveyed to Lancaster, Ltd., by instrument of record in Volume 2001247, Page 4872, Dallas County Deed Records;

THENCE, North 75° 06' 56" East, leaving the easterly right-of-way line of said Houston School Road and along the common line of said Lancaster, Ltd. tract and said 144.651 acre tract, a distance of 310.57 feet to a 5/8" iron rod set for corner, same being the northwesterly corner of a tract of land leased to Nextel of Texas, Inc., by Memorandum of Agreement recorded in Volume 2001011, Page 3476, Dallas County Deed Records;

THENCE, South 14° 53' 04" East, leaving the common line of said 39.7920 acre tract and 144.651 acre tract and along the westerly line of said Lease tract, a distance of 100.00 feet to a 5/8" iron rod set for corner, same being the southwesterly corner of said Lease tract;

THENCE, North 75° 06' 56" East, leaving the westerly line and along the southerly line of said Lease tract, a distance of 100.00 feet to a 5/8" iron rod set for corner, same being the southeast corner of said Lease tract;

THENCE, North 14° 53' 04" West, leaving the southerly line and along the easterly line of said Lease tract, a distance of 100.00 feet to a 5/8" iron rod set for corner, same being the northeasterly corner of said Lease tract, same being in the common line of aforementioned 144.651 acre tract and said Lancaster, Ltd. tract;

THENCE, North 75° 06' 56" East, leaving the easterly line of said Lease tract and along said common line of said Lancaster, Ltd. tract and said 144.651 acre tract, a distance of 2735.65 feet to a 3/4" iron rod found for corner, same being the northeasterly corner of

said 144.651 acre tract and also being in the westerly line of Cedardale Highlands Addition, an addition to the City of Lancaster according to the plat thereof recorded in Volume 12, Page 327, Dallas County Map Records;

THENCE, South 29° 52' 32" East, leaving the common line of said Lancaster, Ltd. tract and said 144.651 acre tract and along the westerly line of said Cedardale Highlands Addition and the easterly line of said 144.651 acre tract, a distance of 1402.87 feet to a 5/8" iron rod set for corner, same being the northeasterly corner of that certain 44.36 acre tract of land conveyed to Robert David DeRosier, Trustee, by instrument of record in volume 83193; Page 4312, Dallas County Deed Records;

THENCE, South 74° 53' 38" West, leaving the westerly line of said Cedardale Highlands Addition and along the common line of said 44.36 acre tract and said 144.651 acre tract, a distance of 1448.98 feet to a 3/4" iron rod found for an interior ell corner of said 144.651 acre tract, same being the northwesterly corner of said 44.36 acre tract;

THENCE, South 29° 49' 20" East, continuing along said common line, a distance of 1559.93 feet to a 1/2" capped iron rod found for corner in the northerly line of Cedardale Drive (40' R.O.W.);

THENCE, South 60° 09' 38" West, leaving the common line of said 144.651 acre tract and 44.36 acre tract and along said northerly right-of-way line, a distance of 1061.32 feet to a 1" iron pipe found for corner in the easterly line of a called 49.741 acre tract of land conveyed to Oscar Victor Eastep, trustee by deed recorded in Volume 88023, Page 4372, Dallas County Deed Records;

THENCE, North 14° 41' 22" West, departing said northerly line and along the common line of said 49.741 acre tract and said 144.651 acre tract, a distance of 1021.37 feet to a 5/8" iron rod set for corner in the easterly line of a called 17.50 acre tract of land conveyed to Leila Edith Penn by deed recorded in Volume 88010, Page 1250, Dallas County Deed Records;

THENCE, North 24° 36' 25" West, along said Leila Edith Penn tract, a distance of 499.42 feet to 1/2" iron pipe found for an interior ell corner of said 144.651 acre tract, same being the northeasterly corner of aforementioned 17.50 acre, James Belton Hall, et al tract;

THENCE, South 89° 32' 29" West, leaving the easterly line and along the northerly line of said James Belton Hall tract, a distance of 1730.10 feet to the POINT OF BEGINNING and containing 6,267,318 square feet or 143.879 acres of land.

TRACT 2

BEING a tract of land situated in the Nathan P. Pierce Survey, Abstract No. 1132, City of Lancaster, Texas and County of Dallas and being all of that certain tract of land conveyed to David DeRosier, Trustee, by deed recorded in Volume 83193 Page 4321 of the Deed Records of Dallas County, Texas, and being more particularly described as follows:

BEGINNING at a 5/8" iron rod set for corner at the intersection of the north line of Cedardale Road (40 ft. R.O.W. at this point) with the east line of said Nathan P. Pierce Survey;

THENCE South 60° 22' 50" West, along the north right-of-way line of said Cedardale Road, a distance of 1402.57 feet to a 1/2" capped iron rod found for corner;

THENCE North 29° 49' 20" West, leaving the north right-of-way line of said Cedardale Road, a distance of 1559.93 feet to a 3/4" iron rod found for corner;

THENCE North 74° 53' 38" East, a distance of 1448.98 feet to a 5/8" iron rod set for corner in the west line of Cedardale Highland Addition, an addition to the City of Lancaster according to the plat thereof recorded in Volume 12, Page 327, Dallas County Map Records;

THENCE South 29° 52' 32" East, along the west line of said Cedardale Highlands Addition, a distance of 1196.81 feet to the POINT OF BEGINNING and containing 1,932,374 square feet or 44.361 acres of land.

TRACT 3

SITUATED in the State of Texas and County of Dallas and being part of that certain 86.80 acre tract of land in the NATHAN P. PIERCE SURVEY, ABSTRACT NO. 1132, as conveyed to C.L. Eastep in a Deed of record in Volume 231, page 313 of the Deed Records of said Dallas County, Texas and being more particularly described as follows:

BEGINNING at an iron rod in the east line of Houston School Road (60 feet wide) that is North, 1467.13 feet and N. 89 deg. 30 min., E., 30 feet from the southwest corner of said Pierce Survey; THENCE North, along the east line of said Houston School Road, 413.20 feet to an iron rod found in the north line of said 86.80 acre tract of land; THENCE N. 89 deg. 30 min., E., along the north line of said 86.80 acre tract, 1750.00 feet to an iron rod found at the northeast corner of said 86.80 acre tract; THENCE S. 24 deg. 45 min. E., along the east line of said 86.80 acre tract, 453.19 feet to an iron rod for corner; THENCE S. 89 deg. 30 min. W., a distance of 1939.75 feet to the PLACE OF BEGINNING and containing 17.50 acres of land.

SAVE AND EXCEPT:

BEING a 0.190 acre tract or parcel of land in the Nathan P. Pierce Survey, Abstract No. 1132, Dallas County, Texas, and being a portion of that called 17.5 acre tract which was conveyed to James Belton Hall, et al as Tract 1 by the Partition Deed recorded in volume 88010, Page 1250, of the Deed Records of Dallas County, Texas, and being more particularly described as follows;

BEGINNING at a set 5/8 inch iron rod, a point for corner on the east line of Houston School Road (a 60' R.O.W. at this point), said point being NORTH 00 degrees 34 minutes 47 seconds WEST, 1447.13 feet from the intersection of said east line of Houston School Road with the north line of Cedardale Road (40' R.O.W.), said point also being on the north line of a called 17.5 acre tract conveyed to Leila Edith Penn as Tract 2 by said deed;

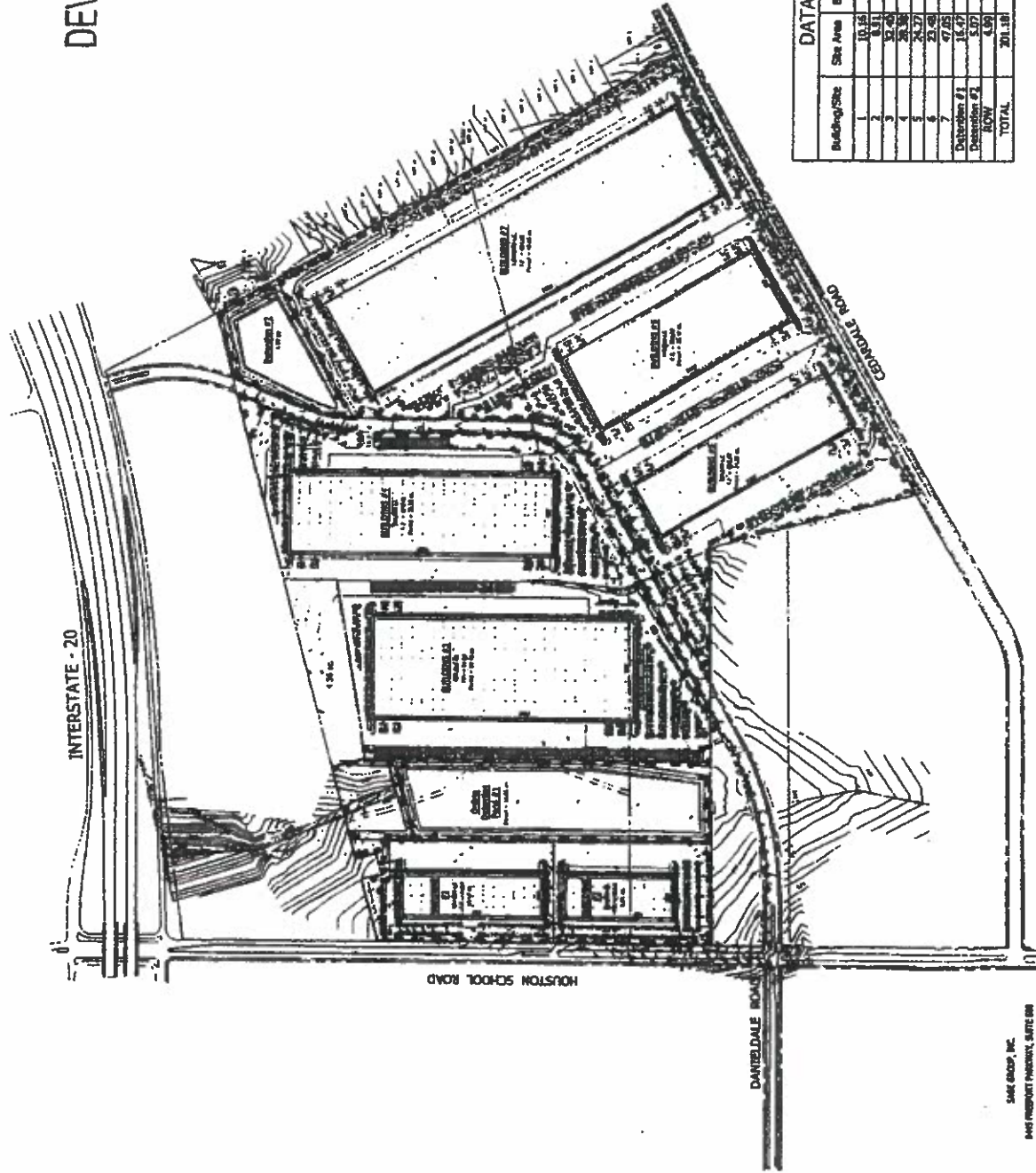
THENCE, along said existing east line of Houston School Road, NORTH 00 degrees 34 minutes 47 seconds WEST, a distance of 413.21 feet to a set 5/8 inch iron rod, a point for corner on the south line of a called 144.651 acre tract conveyed to Lancaster 260 Partnership by deed recorded in Volume 94074, Page 3388, of the Deed Records of Dallas County, Texas, said corner lying NORTH 88 degrees 53 minutes 47 seconds EAST 0.72 feet from a found 5/8 inch iron rod;

THENCE, departing said east line of Houston School Road and along said south line of 144.651 acre tract, NORTH 88 degrees 53 minutes 47 seconds EAST, for a distance of 20.00 feet to a set 5/8 inch iron rod, a point for corner, said point being perpendicular to and 50.00 feet from the proposed centerline of said Houston School Road;

THENCE, departing said south line of 144.651 acre tract, at all times being parallel to and 50.00 feet from said proposed centerline of Houston School Road, SOUTH 00 degrees 34 minutes 47 seconds EAST, for a distance of 413.21 feet to a set 5/8 inch iron rod, a point for corner on the north line of said Tract 2;

THENCE, along said north line of Tract 2, SOUTH 88 degrees 55 minutes 13 seconds WEST, for a distance of 20.00 feet to the POINT OF BEGINNING, and

CONCEPTUAL DEVELOPMENT PLAN



DATA SUMMARY				
Building/Size	Site Area	Building Area	Parking Spaces	Ratio (Per 1000 s.f.)
1	10.15	154,000 s.f.	187	1.3
2	8.31	132,000 s.f.	111	2.6
3	32.40	650,000 s.f.	720	0.8
4	28.36	570,000 s.f.	536	1.8
5	24.27	370,000 s.f.	457	1.4
6	23.48	440,000 s.f.	351	0.8
7	47.25	1,000,000 s.f.	266	0.3
Detention #1	16.47		18	18
Detention #2	5.07		18	18
ROW	4.86		18	18
TOTAL	201.18	3,215,000 s.f.	2,460	18

Lancaster Business Park

Lancaster, Texas

S&B GROUP, INC.
2405 FREQUENT PARKWAY, SUITE 200
HOUSTON, TEXAS 77058
TEL. 872-994-4443



EXHIBIT B
To Infrastructure Incentive Agreement
PROJECT PLAN
INFRASTRUCTURE IMPROVEMENTS SUMMARY
SERVING APPROXIMATELY 343 ACRES
(ENGINEERING BUDGET PREPARED BY HALFF ASSOCIATES)
October 10, 2004

<u>Area</u>	<u>Estimated Project Costs</u>
CITY Water/Sewer/Drainage	\$ 783,829
Danielsdale Drive Extension (including water/sewer, street lighting, landscaping, irrigation, signalization)	\$3,212,242
Engineering Fees/Design Surveys	<u>\$ 407,599</u>
Total Project Costs (excl. contingency)	\$4,403,670*
Maximum amount to be reimbursed by LEDC	<u>\$1,500,000</u>

* See attached itemization prepared by Halff Associates, Inc.

INFRASTRUCTURE CONSTRUCTION SCHEDULE ESTIMATED TIME LINE										
Task Name	Duration	Oct-04	Nov-04	Dec-04	Jan-05	Feb-05	Mar-05	Apr-05	May 05 - Dec 06	
Surveying/R.O.W. Documentation	6 wks									
Design, Review, and Approval										
Initial CITY Submittal	10 wks									
Final Submittal/Approval	6 wks									
Bidding and Award of Contract	8 wks									
Construction	28 wks									

EXHIBIT B-1
To Infrastructure Incentive Agreement
PROJECT PLAN PRELIMINARY SPECIFICATIONS

LANCASTER BUSINESS PARK COST ESTIMATE - PUBLIC INFRASTRUCTURE IMPROVEMENTS

LANCASTER, TEXAS
PREPARED BY HALFF ASSOCIATES
5-NOV-04
AVO NO. 22345

ITEM	DESCRIPTION	QUANTITY	UNIT	PRICE PER UNIT	TOTAL ITEM COST	TOTAL SECTION COST
I.	ONSITE IMPROVEMENTS					
A. WATER						
	12" Water line, hydrants, valves, fittings	4,976	LF	\$ 56	\$ 278,256	
	TOTAL COST OF WATER					\$ 278,256
B. SANITARY SEWER						
	8" Sanitary sewer line and manholes	3,831	LF	\$ 32	\$ 122,592	
	TOTAL COST OF SANITARY SEWER					\$ 122,592
C. DRAINAGE FOR EXISTING 42" RCP AT HOUSTON SCHOOL ROAD & DETENTION PONDS						
	42" RCP	636	LF	\$ 142	\$ 90,312	
	42" Manhole	1	EA	\$ 6,500	\$ 6,500	
	West Detention Pond Outfall	1	LS	\$ 68,000	\$ 68,000	
	East Detention Pond Outfall	1	LS	\$ 21,000	\$ 21,000	
	Detention Ponds	108,000	CY	\$ 2	\$ 216,000	
	TOTAL COST OF DRAINAGE ITEMS					\$ 381,812
D. DANIELDALE ROAD INFRASTRUCTURE IMPROVEMENTS FROM HOUSTON SCHOOL ROAD TO I-20						
I. PAVING						
	Concrete Paving	39,000	SY	\$ 35.00	\$ 1,365,000	
	Curb and Gutter	10,132	LF	\$ 1.00	\$ 10,132	
	Lean Treated Subgrade	35,000	SY	\$ 2.00	\$ 70,000	
	II. GRADING					
	Grubbing	1	LS	\$ 75,000.00	\$ 75,000	
	Clearing & Grubbing of right-of-way	11.5	AC	\$ 1,300.00	\$ 14,950	
	TOTAL COST OF DANIELDALE ROAD PAVING & GRADING					\$ 1,525,082
III. DRAINAGE						
	18" RCP	1,230	LF	\$ 50.00	\$ 61,500	
	21" RCP	280	LF	\$ 55.00	\$ 15,400	
	24" RCP	108	LF	\$ 62.50	\$ 6,750	
	30" RCP	50	LF	\$ 88.00	\$ 4,400	
	36" RCP	290	LF	\$ 100.00	\$ 29,000	
	54" RCP	60	LF	\$ 179.00	\$ 10,740	
	60" RCP	850	LF	\$ 205.00	\$ 174,250	
	66" RCP	1,310	LF	\$ 300.00	\$ 393,000	
	66" RCP	625	LF	\$ 525.00	\$ 328,125	
	Triple 10x14" RCB	80	LF	\$ 2,111.00	\$ 168,880	
	Curb Inlets	25	EA	\$ 2,585	\$ 64,625	
	54" Headwalls	1	EA	\$ 8,000	\$ 8,000	
	6x6" Headwalls	2	EA	\$ 12,000	\$ 24,000	
	Triple 10x14" Headwalls	2	EA	\$ 18,000	\$ 36,000	
IV. WATER						
	12" Water line, hydrants, valves, fittings	4,332	LF	\$ 56.00	\$ 242,592	
V. SANITARY SEWER						
	8" Sanitary sewer line and manholes	1,800	LF	\$ 32.00	\$ 57,600	
VI. RIGHT-OF-WAY & EASEMENT DOCUMENT PREPARATION						
		21	EA	\$ 3,000.00	\$ 63,000	
	TOTAL COST OF DANIELDALE ROAD UTILITIES					\$ 1,067,519
	TOTAL COST OF DANIELDALE ROAD PAVING & UTILITIES					\$ 2,592,242
DANIELDALE ROAD MISCELLANEOUS IMPROVEMENTS						
	STREET LIGHTING	1	LS	\$ 130,000	\$ 130,000	
	LANDSCAPING	1	LS	\$ 20,000	\$ 20,000	
	IRRIGATION FOR DANIELDALE MEDIANS	1	LS	\$ 5,000	\$ 5,000	
	TRAFFIC SIGNAL AT HOUSTON SCHOOL ROAD	1	LS	\$ 125,000	\$ 125,000	
	TOTAL COST OF DANIELDALE ROAD MISCELLANEOUS IMPROVEMENTS					\$ 300,000
	TOTAL COST OF DANIELDALE ROAD					\$ 3,212,242
II. TOTAL COST SUMMARY						
A. ONSITE IMPROVEMENTS						
	WATER				\$ 278,256	
	SANITARY SEWER				\$ 122,592	
	DRAINAGE				\$ 381,812	
	TOTAL COST ONSITE IMPROVEMENTS					\$ 782,660
	TOTAL COST OF ROADWAY IMPROVEMENTS					\$ 3,212,242
	TOTAL COST OF PROJECT					\$ 3,996,071
III. PROJECT ENGINEERING / DESIGN SURVEYING						
	TOTAL COST OF PROJECT				\$ 3,996,071	
	ENGINEERING FEES					\$ 335,570
	DESIGN SURVEYING					\$ 71,529
	TOTAL COST TO ARGENT					\$ 4,403,670

DISCLAIMER
THIS STATEMENT WAS PREPARED UTILIZING STANDARD COST AND QUANTITY ESTIMATE PRACTICES. IT IS UNDERSTOOD AND AGREED THAT THIS IS AN ESTIMATE ONLY, AND THAT THE ENGINEER SHALL NOT BE LIABLE TO OWNER OR TO A THIRD PARTY FOR ANY FAILURE TO ACCURATELY ESTIMATE THE COST AND/OR QUANTITIES FOR THE PROJECT, OR ANY PART THEREOF.

ASSUMPTIONS
1. THIS ESTIMATE DOES NOT INCLUDE ANY FUND TO UPGRADE OR RENOVATE THE EXISTING LIFT STATION THAT SERVES THE SITE.
2. UNIT COST FOR UTILITIES WERE PROVIDED BY DOWAGER CONSTRUCTION.

EXHIBIT C

To Infrastructure Incentive Agreement

FINANCING PLAN

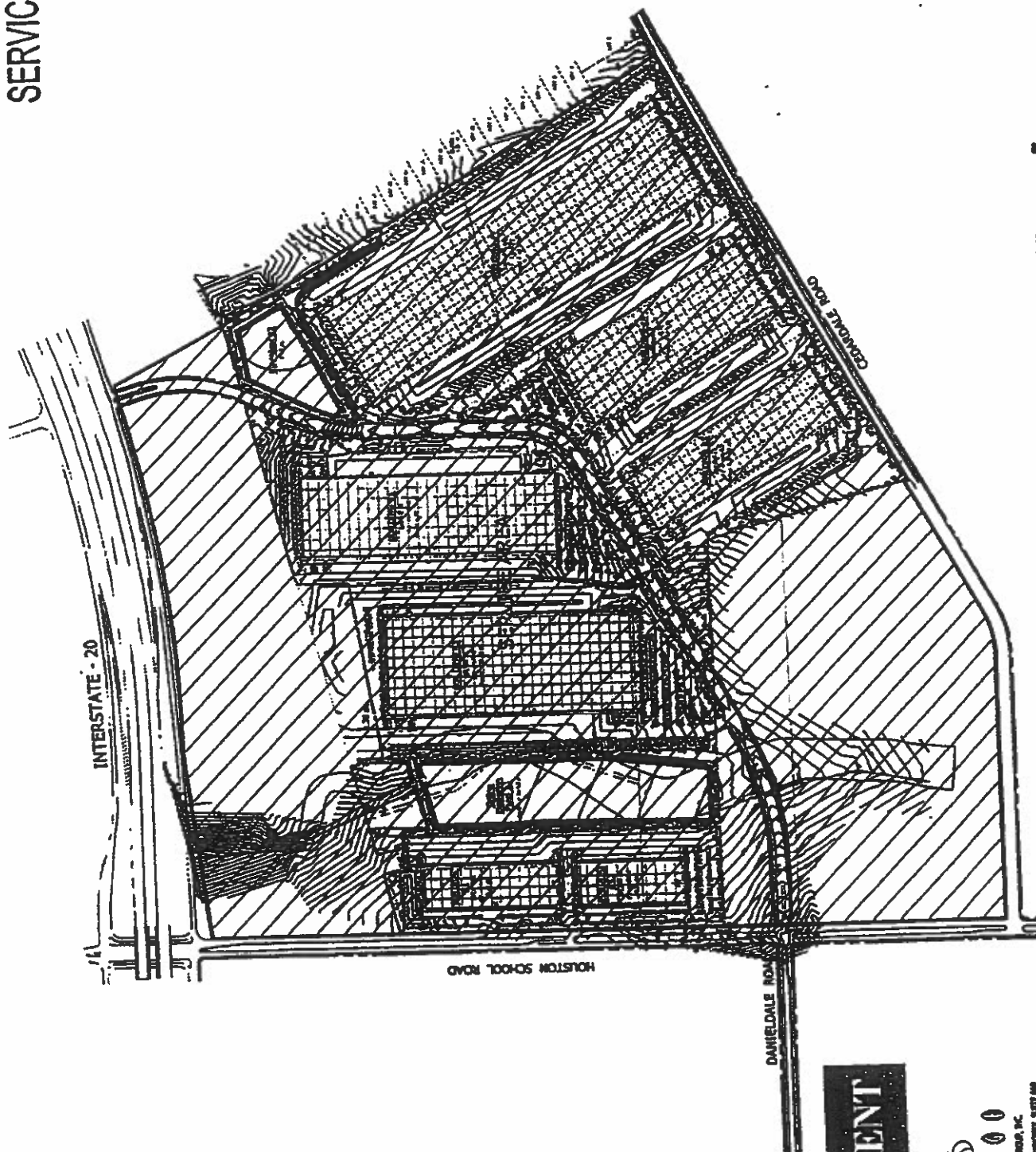
SCHEDULE OF REIMBURSEMENTS

Amounts Payable by LEDC	Payment Terms
\$500,000.00	Ten (10) days after Project Commencement
\$1,000,000.00	Ten (10) days after Qualified Building Completion
Sales Tax Grant (First Term)	One fourth (1/4) of one percent of taxable sales generated from sales tax payments by any tenants, corporate users, or other vendors occupying buildings in the Serviced Area, payable on a quarterly basis in each month following a quarter in which such sales tax proceeds are remitted to City, during the First Term
Sales Tax Grant (Second Term)	One fourth (1/4) of one percent of taxable sales generated from sales tax payments by any tenants, corporate users, or other vendors occupying buildings in the Serviced Area, payable on a quarterly basis in each month following a quarter in which such sales tax proceeds are remitted to City, during the Second Term

EXHIBIT D
To Infrastructure Incentive Agreement
SERVICED AREA BOUNDARIES

609588.8

SERVICE AREA



Lancaster Business Park

Lancaster, Texas

ARGENT

00000

SARG GROUP, INC.
SARG PROPERTY SERVICES, LLC
HOUSTON, TEXAS 77063
TEL. 713-874-4443

Argent Development

ECONOMIC DEVELOPMENT AGREEMENT

This ECONOMIC DEVELOPMENT AGREEMENT is entered into this 3rd day of December, 2004, by and between the CITY OF LANCASTER, TEXAS, a home rule city and municipal corporation of Dallas County, Texas, duly acting by and through its Mayor, hereinafter referred to as CITY, and ARGENT DEVELOPMENT GP, L.L.C., a Texas limited liability company, duly acting by and through C. E. Cornutt, as President, or its successors in interest, hereinafter referred to as OWNER.

WITNESSETH:

WHEREAS, pursuant to its Resolution No. 2004-11-101, adopted by the City Council of the CITY on November 29, 2004, the CITY established a program (the PROGRAM) to promote local economic development and stimulate business and commercial activity within the municipality. The PROGRAM involves grants to property owners for CITY taxes paid on a portion of real property taxes paid by such owners, and its successors and assigns. All transactions involving the use of public funds and resources in the establishment and administration of the PROGRAM contain sufficient controls to ensure that the said public purposes are carried out; and

WHEREAS, the CITY has identified property that is the site of a master-planned 206-acre business park (as expanded in the future, the "Trade Center"), as described on the attached Exhibit A, which is eligible under the PROGRAM for certain economic development grants; and

WHEREAS, OWNER is contemporaneously entering into an Infrastructure Incentive Agreement with CITY and LANCASTER ECONOMIC DEVELOPMENT CORPORATION, LANCASTER, TEXAS providing for the development by OWNER of certain public infrastructural improvements which will serve the Trade Center and properties in the vicinity of the Trade Center. Such agreement is referred to herein as the INFRASTRUCTURE INCENTIVE AGREEMENT. A portion of the cost of such infrastructural improvements shall be reimbursed to OWNER pursuant to the PROGRAM, as more particularly provided in this AGREEMENT; and

WHEREAS, Section 380.001 of the Local Government Code provides statutory authority for establishing and administering the said PROGRAM, including making loans and grants of money.

NOW THEREFORE, the parties hereto mutually agree as follows:

1. The property to be the subject of this AGREEMENT shall be the property comprising the Trade Center, as described on Exhibit A. If OWNER or its affiliate subsequently purchases the two adjacent undeveloped tracts of land totaling 67 acres at the southwest corner of the property described on Exhibit A during the term of this AGREEMENT, the term PROJECT AREA as used herein shall mean these sites, when and if acquired by OWNER, together with the property described on Exhibit A.

2. The OWNER has already undertaken due diligence and schematic design for the PROJECT AREA which allows for its development, thereby having a significant positive economic benefit for the CITY. Further, OWNER currently intends to build improvements on the PROJECT AREA for lease and/or sale to third parties and may sell tracts of land in the PROJECT AREA to third parties that such third parties will improve. Subject to its acquisition of ownership of the PROJECT AREA, OWNER does hereby commit to begin improvements on some portion of the PROJECT AREA in accordance with the INFRASTRUCTURE INCENTIVE AGREEMENT, consistent with uses allowed by the City zoning ordinances (such improvements being hereinafter referred to as IMPROVEMENTS). The IMPROVEMENTS will be constructed in accordance with all applicable state and local laws and regulations or a valid waiver thereof.

3. Subject to the terms and conditions of this AGREEMENT and the completion of certain infrastructure improvements defined in the INFRASTRUCTURE INCENTIVE AGREEMENT:

a. CITY shall make grants to OWNER, and any successors and assignees of OWNER with respect to all or a portion of the property in the PROJECT AREA, in amounts equal to a percentage of the municipal ad valorem taxes shown on Exhibit B assessed upon the value of real property and improvements in the PROJECT AREA for up to twenty (20) years following January 1 of the year after the first building in the PROJECT AREA is substantially completed (currently anticipated to be 2007). The grants will be payable to OWNER or any such successors or assignees within thirty (30) days of CITY'S full receipt of real estate taxes in each year during the twenty (20) year term of such rebate. In the event of a transfer of any portion of the property in the PROJECT AREA during any year for which a grant is due, the transferor may give the CITY notice of such transfer and its assignment of the grant hereunder for all or a portion of the PROJECT AREA and the CITY shall then make the grant for such year allocable to the transferred property to the designated transferee of such property.

b. In addition, tenants of buildings in the PROJECT AREA will receive a fifty percent (50%) rebate from CITY on business and personal property ad valorem tax levied by CITY, subject to City Council approval in accordance with applicable CITY program guidelines, for up to ten (10) years following January 1 of the year after the first building in the PROJECT AREA is substantially completed. To help insure the success of the development of the PROJECT AREA, OWNER will market this incentive to prospective tenants and users consistent with the terms of CITY'S program.

4. In the event that OWNER breaches any of the terms or conditions of this AGREEMENT, then this AGREEMENT shall be in default. In the event OWNER so defaults, then the CITY shall give the OWNER written notice of such default and if the OWNER has not cured such default, or obtained a waiver thereof from the appropriate authority, within thirty (30) days of such written notice, or, if such default cannot be cured by the payment of money and cannot with due diligence be cured within a thirty (30) day period owing to causes beyond the control of the OWNER, and the OWNER does not commence to cure such default within said thirty (30) day period and thereafter diligently proceed with its efforts to cure same, this AGREEMENT may be terminated by the CITY. Notice shall be in writing as provided below.

In addition, in the event that OWNER, or any subsequent owner of property in the PROJECT AREA to which OWNER has assigned in writing all or a portion of its grant hereunder pursuant to Section 3 above, allow its ad valorem taxes owed to the CITY for its property in the PROJECT AREA to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of any such ad valorem taxes, then such owner, with respect to the portion of the PROJECT AREA for which it is delinquent, shall not receive the grants provided in Section 3a. above and if such delinquent payment is not cured within thirty (30) days of written notice thereof to such owner by the CITY, CITY's future obligation to make grants to such owner, for the property in the PROJECT AREA for which such owner is delinquent, shall cease. It is specifically provided that grants otherwise payable under this AGREEMENT to other OWNERS in the PROJECT AREA shall not be affected by such defaulting OWNER'S failure to pay real property taxes on such OWNER'S portion of the PROJECT AREA.

5. It is intended by the parties hereto that the grants provided in Section 3a. hereof may be assigned by OWNER to successor owners with respect to the real estate ad valorem taxes paid by such successor owners for property in the PROJECT AREA. OWNER shall give CITY notice of such assignment pursuant to Section 9 below. This AGREEMENT is, to the extent provided by law, intended to bind the CITY to make such grants to each successor or assignee of the OWNER without the consent or approval, or any other action, of the CITY.

6. It is understood and agreed between the parties that the OWNER, in performing its obligations hereunder, is acting independently, and the CITY assumes no responsibilities or liabilities in connection therewith to third parties and OWNER agrees to indemnify and hold CITY harmless therefrom; however, OWNER will not indemnify or hold the CITY harmless from any liabilities or responsibilities arising out of the CITY's breach of this contract, or CITY's gross negligence or intentional misconduct. It is further understood and agreed among the parties that the CITY, in performing its obligations hereunder, is acting independently, and the OWNER assumes no responsibilities or liabilities in connection therewith to third parties. **HOWEVER, OWNER DOES ASSUME RESPONSIBILITY AND LIABILITY ARISING OUT OF OWNER'S BREACH OF THIS CONTRACT, AND OWNER'S GROSS NEGLIGENCE AND INTENTIONAL MISCONDUCT.**

7. The OWNER further agrees that the CITY, its agents and employees, shall have reasonable rights of access to the PROJECT AREA to inspect the IMPROVEMENTS in order to insure that the construction of the IMPROVEMENTS is in accordance with all applicable agreements with the CITY, including this AGREEMENT, and all applicable state and local laws and regulations or valid waiver thereof. After completion of the IMPROVEMENTS, the CITY shall have the continuing right, subject to OWNER's reasonable security requirements, to inspect the PROJECT AREA to insure that the PROJECT AREA is thereafter maintained, operated and occupied in accordance with all applicable agreements with the CITY.

8. A portion or all of the PROJECT AREA or any improvements or personal property thereon may be eligible for complete or partial exemption or abatement from ad valorem taxes, as a result of existing law or future legislation or action by any state or local government and this AGREEMENT is not to be construed as evidence that no such exemptions or abatements apply or may be granted with respect to the PROJECT AREA or any

improvements or personal property thereon. Likewise, the AGREEMENT shall not be construed to prohibit OWNER's (or any subsequent owner of property in the PROJECT AREA) protest or contest of any or all appraisals or assessments of any property in the PROJECT AREA, including improvements or personal property thereon. The ultimate grant provided for in Section 3a. above shall be based upon the real property taxes as finally determined, after such protest or contest, to be due for such property in the PROJECT AREA.

9. 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 Lancaster
Attention: City Manager
211 North Henry Street
Lancaster, Texas 75146

with copy to:

City of Lancaster
Attention: City Attorney
211 North Henry Street
Lancaster, Texas 75146

For OWNER by notice to:

c/o Argent Development GP, L.L.C.
Attention: C. E. Cornutt
5949 Sherry Lane, Suite 1000
Dallas, Texas 75225

Any party may change the address and add additional parties (owners) to whom notice will be sent by giving the other parties written notice in the manner provided in this paragraph.

10. On the 31st day of January 2006, and annually thereafter, OWNER shall certify to the CITY its compliance with each applicable term of this AGREEMENT for the preceding year.

11. This AGREEMENT was authorized by Resolution No. 2004-11-101 of the City Council, dated November 29, 2004, authorizing the Mayor or the City Manager to execute the Agreement on behalf of the CITY.

12. This AGREEMENT was entered into by C. E. Cornutt pursuant to his authority as the President of OWNER.

13. This shall constitute a valid and binding AGREEMENT between the CITY and OWNER upon execution.

14. Upon request and payment of fees as required by applicable law, CITY will furnish to OWNER, for prospective purchasers of a portion (or all) of the PROJECT AREA, a certified copy of this Agreement reflecting the grants described in Section 3a., above and confirm at OWNER'S written request that OWNER is not in default under this AGREEMENT (if no default shall exist) and the assignability of same.

CITY OF LANCASTER, TEXAS

By: 

Joe Tillotson, Mayor

By: 

Jim Landon, City Manager

ARGENT DEVELOPMENT GP, L.L.C.,
a Texas limited liability company

By: 

Name: C. B. Cornutt

Title: President

ATTEST:

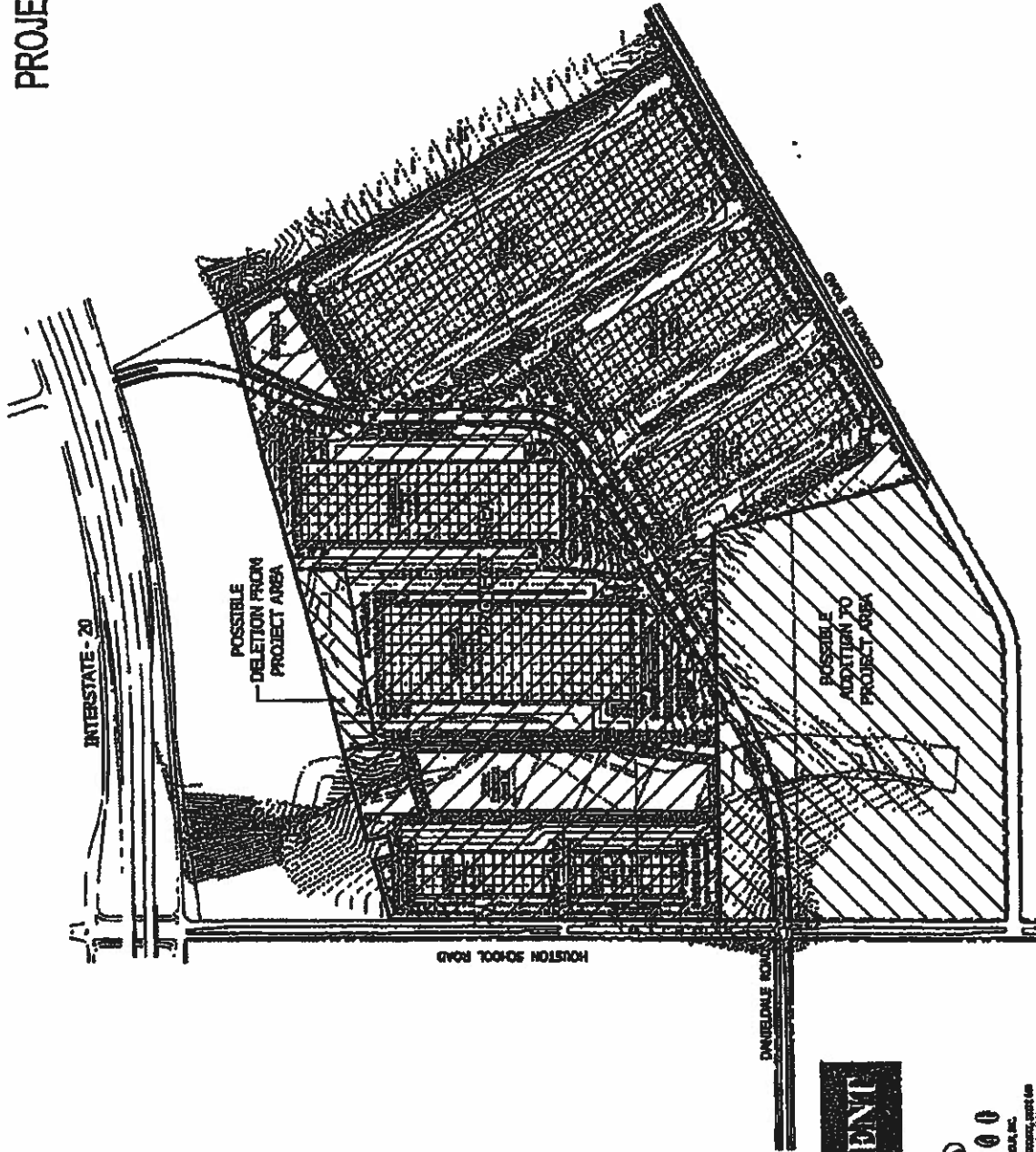

Dolle K. Shane
City Secretary

Approved as to form:


Robert Hager, City Attorney

Exhibit A
Project Area (Initial 206 acres)

PROJECT AREA



ARGENT

0000

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ARGENT, INC.
1400 WESTERN AVENUE, SUITE 100
HOUSTON, TEXAS 77057
TEL: 281-280-0000



Lancaster Business Park

Lancaster, Texas

Exhibit B
To Argent Development GP, L.L.C. Economic Development Agreement

Grant Amounts and Utilization

For ten (10) years following January 1 of the year after the first building(s) is substantially completed;

- Grant to OWNER, in the amount of 70% of the actual ad valorem tax payments on real property within the Project Area, would be paid to OWNER for discretionary use in offsetting OWNER'S costs in development, marketing, and leasing of OWNER's park.
- Grant to OWNER, in the amount of 20% of the actual ad valorem tax payments on real property within the Project Area, would be paid to OWNER for existing infrastructure debt service, first to interest and then to principal until the debt is retired (after which the 20% rebate expires).
- Grant period for 67 acres included in the Project Area by reason of OWNER's subsequent purchase will run concurrently with rebates for the initial 206-acre Project Area, regardless of when OWNER purchases such land.

For the second ten (10) years;

- Grant to OWNER, in the amount of 90% of the actual ad valorem tax payments on real property within the Project Area, would be paid to OWNER for existing infrastructure debt service, first to interest and then to principal until the debt is retired (after which the grant expires).
- Grant period for [67 acres] included in the Project Area by reason of OWNER's subsequent purchase will run concurrently with rebates for the initial 206-acre Project Area, regardless of when OWNER purchases such land.

600589.6



FILE

1.10

January 25, 2006

Mr. Jim Landon
City Manager
City of Lancaster
211 North Henry Street
Lancaster, Texas 75146

Sent Via Certified Mail #7004-0750-0001-8543-4631

Re: Certification of Compliance - Economic Development Agreement

Dear Jim:

Whereas, an Economic Development Agreement (Agreement) was entered into December 3, 2004 between the City of Lancaster (City) and Argent Development GP, LLC (Owner) pursuant to Resolution 2004-11-101 adopted by City council on November 29, 2004; and

Whereas, Owner contemporaneously entered into an Infrastructure Incentive Agreement with the City and Lancaster Economic Development Corporation (LEDC) providing for the development by Owner of certain public infrastructural improvements referred herein as Infrastructure Incentive Agreement; and

Whereas, Prologis & Argent, LP a Texas limited partnership is now Owner as successor and assignee from Argent Development GP, LLC.

In accordance to Section 10 of the Economic Development Agreement we hereby certify as Owner that we are in compliance with each applicable term of the Agreement for the proceeding year.

Respectfully,

Robert E. McCann
Vice President - Prologis
Agent for: ProLogis: Argent, LP

Cc: Gary E. Anderson - Prologis
CE Cornutt- Argent Development GP, LLC.
Robert Hagar- City of Lancaster
Board of Directors- Lancaster Economic Development Corporation

**ASSIGNMENT OF PURCHASE AND SALE AGREEMENTS,
ECONOMIC DEVELOPMENT AGREEMENT,
AND INFRASTRUCTURE INCENTIVE AGREEMENT
ARGENT DEVELOPMENT GP, L.L.C. TO PROLOGIS & ARGENT, L.P.**

THIS ASSIGNMENT OF PURCHASE AND SALE AGREEMENTS, ECONOMIC DEVELOPMENT AGREEMENT, AND INFRASTRUCTURE INCENTIVE AGREEMENT ("Assignment") is made as of January 20, 2005, by ARGENT DEVELOPMENT GP, L.L.C., a Texas limited liability company ("Assignor"), to PROLOGIS & ARGENT, L.P., a Texas limited partnership ("Assignee").

RECITALS:

A. Assignor has executed a Purchase and Sale Agreement with Lancaster 260, L.P., a Texas limited partnership, dated with an effective date of April 21, 2004, as the same has been amended from time to time (the "144 Acres Contract") for the property described in the 144 Acres Contract, located in the City of Lancaster, Dallas County, Texas, and more particularly described on Exhibit A attached hereto ("Tract A");

B. Assignor has executed a Purchase and Sale Agreement with Lancaster, Ltd., a Texas limited partnership, dated with an effective date of April 21, 2004, as the same has been amended from time to time (the "44 Acres Contract") for the property described in the 44 Acres Contract, located in the City of Lancaster, Dallas County, Texas, and more particularly described on Exhibit B attached hereto ("Tract B");

C. Assignor is the successor to the purchaser's interest in a Purchase and Sale Agreement with Robert Lewis Hall, et al, dated with an effective date of June 15, 2004, as the same has been amended from time to time (the "17.3 Acres Contract") for the real property described in the 17.3 Acres Contract, located in the City of Lancaster, Dallas County, Texas, and more particularly described on Exhibit C attached hereto ("Tract C");

D. Assignor has executed an Economic Development Agreement with the City of Lancaster, Texas, a home rule city and municipal corporation of Dallas County, Texas, dated December 3, 2004, (the "Economic Development Agreement"); and

E. Assignor has executed an Infrastructure Incentive Agreement with the City of Lancaster, Texas, a home rule city and municipal corporation of Dallas County, Texas, and The Lancaster Economic Development Corporation, dated December 3, 2004, (the "Infrastructure Incentive Agreement"). The 17.3 Acres Contract, 44 Acres Contract, 144 Acres Contract, Economic Development Agreement and the Infrastructure Incentive Agreement are all collectively referred to herein as the "Agreements."

The Parties desire to enter into this Assignment to evidence Assignor's assignment of the Assignor's rights and interests in the Agreements to Assignee and Assignee's assumption of the Assignor's obligations under the Agreements.

ASSIGNMENT OF PURCHASE AND SALE AGREEMENTS, ECONOMIC
DEVELOPMENT AGREEMENT, AND INFRASTRUCTURE INCENTIVE AGREEMENT
619625.1

PAGE 1

ASSIGNMENT

NOW, THEREFORE, in consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. Assignment/Assumption of 144 Acres Contract. Assignor hereby assigns and transfers to Assignee the 144 Acres Contract and Assignor's interest, if any, in Tract A. Assignee hereby acknowledges and agrees to all of the terms of the 144 Acres Contract, accepts the foregoing assignment, and assumes and agrees to perform the obligations of the Purchaser under the 144 Acres Contract.
2. Assignment/Assumption of 44 Acres Contract. Assignor hereby assigns and transfers to Assignee the 44 Acres Contract and Assignor's interest, if any, in Tract B. Assignee hereby acknowledges and agrees to all of the terms of the 44 Acres Contract, accepts the foregoing assignment, and assumes and agrees to perform the obligations of the Purchaser under the 44 Acres Contract.
3. Assignment/Assumption of 17.3 Acres Contract. Assignor hereby assigns and transfers to Assignee the 17.3 Acres Contract and Assignor's interest, if any, in Tract C. Assignee hereby acknowledges and agrees to all of the terms of the 17.3 Acres Contract, accepts the foregoing assignment, and assumes and agrees to perform the obligations of the Purchaser under the 17.3 Acres Contract.
4. Assignment/Assumption of Economic Development Agreement. Assignor hereby assigns and transfers to Assignee the Economic Development Agreement. Assignee hereby acknowledges and agrees to all of the terms of the Economic Development Agreement, accepts the foregoing assignment, and assumes and agrees to perform the obligations of Assignor under the Economic Development Agreement.
5. Assignment/Assumption of Infrastructure Incentive Agreement. Assignor hereby assigns and transfers to Assignee the Infrastructure Incentive Agreement. Assignee hereby acknowledges and agrees to all of the terms of the Infrastructure Incentive Agreement, accepts the foregoing assignment, and assumes and agrees to perform the obligations of Assignor under the Infrastructure Incentive Agreement.
6. Governing Law. This Assignment shall be governed by and construed in accordance with the laws of the State of Texas.
7. Execution. A facsimile signature shall have the same legal effect as a manual signature.

IN WITNESS WHEREOF, the parties have executed this Assignment as of the day and year first above written.

ASSIGNMENT OF PURCHASE AND SALE AGREEMENTS, ECONOMIC
DEVELOPMENT AGREEMENT, AND INFRASTRUCTURE INCENTIVE AGREEMENT
619685.1

PAGE 2

ASSIGNOR:

ARGENT DEVELOPMENT GP, L.L.C.,
a Texas limited liability company

By: 
C.E. Cornutt, President

ASSIGNEE:

PROLOGIS & ARGENT, L.P.,
a Texas limited partnership

By: **ProLogis & Argent GP LLC,**
a Delaware limited liability company,
its general partner

By: _____
Name: _____
Title: _____

ASSIGNOR:

ARGENT DEVELOPMENT GP, L.L.C.,
a Texas limited liability company

By: _____
C.E. Cornutt, President

ASSIGNEE:

PROLOGIS & ARGENT, L.P.,
a Texas limited partnership

By: ProLogis & Argent GP LLC,
a Delaware limited liability company,
its general partner

By: [Signature]
Name: Scott Strine
Title: Vice President

EXHIBIT A

LEGAL DESCRIPTION - TRACT A

BEING a tract of land situated in the N.P. Pierce Survey Abstract Number 1132, City of Lancaster, Dallas County, Texas and being a portion of that certain 144.651 acres of land conveyed to Lancaster 260 Partnership by Instrument of record in Volume 84074, Page 3388, Dallas County Deed Records, and being more particularly described as follows:

BEGINNING at a 5/8" iron rod set in the easterly right-of-way line of Houston School Road (100' R.O.W.), same being the most westerly southwest corner of said Lancaster 260 Partnership tract, same also being in the northerly line of that certain 17.50 acre tract of land conveyed to James Belton Hall, et al, by Instrument of record in Volume 88010, Page 1250, Dallas County Deed Records;

THENCE, North 00° 03' 57" East, leaving the northerly line of said 17.50 acre tract and along said easterly right-of-way line, a distance of 1197.97 feet to a 5/8" iron rod set for corner;

THENCE, North 00° 06' 01" West, continuing along said easterly right-of-way line, a distance of 41.15 feet to a 5/8" iron rod set for corner, same being in the southerly line of a tract of land conveyed to Lancaster, Ltd., by instrument of record in Volume 2001247, Page 4872, Dallas County Deed Records;

THENCE, North 75° 06' 56" East, leaving the easterly right-of-way line of said Houston School Road and along the common line of said Lancaster, Ltd. tract and said 144.651 acre tract, a distance of 310.57 feet to a 5/8" iron rod set for corner, same being the northwesterly corner of a tract of land leased to Nextel of Texas, Inc., by Memorandum of Agreement recorded in Volume 2001011, Page 3476, Dallas County Deed Records;

THENCE, South 14° 53' 04" East, leaving the common line of said 39.7920 acre tract and 144.651 acre tract and along the westerly line of said Lease tract, a distance of 100.00 feet to a 5/8" iron rod set for corner, same being the southwesterly corner of said Lease tract;

THENCE, North 75° 06' 56" East, leaving the westerly line and along the southerly line of said Lease tract, a distance of 100.00 feet to a 5/8" iron rod set for corner, same being the southeast corner of said Lease tract;

THENCE, North 14° 53' 04" West, leaving the southerly line and along the easterly line of said Lease tract, a distance of 100.00 feet to a 5/8" iron rod set for corner, same being the northeasterly corner of said Lease tract, same being in the common line of aforementioned 144.651 acre tract and said Lancaster, Ltd. tract;

THENCE, North 75° 06' 56" East, leaving the easterly line of said Lease tract and along said common line of said Lancaster, Ltd. tract and said 144.651 acre tract, a distance of 2735.65 feet to a 3/4" iron rod found for corner, same being the northeasterly corner of said 144.651 acre tract and also being in the westerly line of Cedardale Highlands Addition, an addition to the City of

ASSIGNMENT OF PURCHASE AND SALE AGREEMENTS, ECONOMIC
DEVELOPMENT AGREEMENT, AND INFRASTRUCTURE INCENTIVE AGREEMENT

EXHIBIT A

Lancaster according to the plat thereof recorded in Volume 12, Page 327, Dallas County Map Records;

THENCE, South 29° 52' 32" East, leaving the common line of said Lancaster, Ltd. tract and said 144.651 acre tract and along the westerly line of said Cedardale Highlands Addition and the easterly line of said 144.651 acre tract, a distance of 1402.87 feet to a 5/8" iron rod set for corner, same being the northeasterly corner of that certain 44.36 acre tract of land conveyed to Robert David DeRosier, Trustee, by instrument of record in volume 83193, Page 4312, Dallas County Deed Records;

THENCE, South 74° 53' 38" West, leaving the westerly line of said Cedardale Highlands Addition and along the common line of said 44.36 acre tract and said 144.651 acre tract, a distance of 1448.98 feet to a 3/4" iron rod found for an interior ell corner of said 144.651 acre tract, same being the northwesterly corner of said 44.36 acre tract;

THENCE, South 29° 49' 20" East, continuing along said common line, a distance of 1559.93 feet to a 1/2" capped iron rod found for corner in the northerly line of Cedardale Drive (40' R.O.W.);

THENCE, South 60° 09' 38" West, leaving the common line of said 144.651 acre tract and 44.36 acre tract and along said northerly right-of-way line, a distance of 1061.32 feet to a 1" iron pipe found for corner in the easterly line of a called 49.741 acre tract of land conveyed to Oscar Victor Bastep, trustee by deed recorded in Volume 88023, Page 4372, Dallas County Deed Records;

THENCE, North 14° 41' 22" West, departing said northerly line and along the common line of said 49.741 acre tract and said 144.651 acre tract, a distance of 1021.37 feet to a 5/8" iron rod set for corner in the easterly line of a called 17.50 acre tract of land conveyed to Leila Edith Penn by deed recorded in Volume 88010, Page 1250, Dallas County Deed Records;

THENCE, North 24° 36' 25" West, along said Leila Edith Penn tract, a distance of 499.42 feet to 1/2" iron pipe found for an interior ell corner of said 144.651 acre tract, same being the northeasterly corner of aforementioned 17.50 acre, James Belton Hall, et al tract;

THENCE, South 89° 32' 29" West, leaving the easterly line and along the northerly line of said James Belton Hall tract, a distance of 1730.10 feet to the POINT OF BEGINNING and containing 6,267,318 square feet or 143.879 acres of land.

EXHIBIT B

LEGAL DESCRIPTION - TRACT B

BEING a tract of land situated in the Nathan P. Pierce Survey, Abstract No. 1132, City of Lancaster, Texas and County of Dallas and being all of that certain tract of land conveyed to David DeRosier, Trustee, by deed recorded in Volume 83193 Page 4321 of the Deed Records of Dallas County, Texas, and being more particularly described as follows:

BEGINNING at a 5/8" iron rod set for corner at the intersection of the north line of Cedardale Road (40 ft. R.O.W. at this point) with the east line of said Nathan P. Pierce Survey;

THENCE South 60° 22' 50" West, along the north right-of-way line of said Cedardale Road, a distance of 1402.57 feet to a 1/2" capped iron rod found for corner;

THENCE North 29° 49' 20" West, leaving the north right-of-way line of said Cedardale Road, a distance of 1559.93 feet to a 3/4" iron rod found for corner;

THENCE North 74° 53' 38" East, a distance of 1448.98 feet to a 5/8" iron rod set for corner in the west line of Cedardale Highland Addition, an addition to the City of Lancaster according to the plat thereof recorded in Volume 12, Page 327, Dallas County Map Records;

THENCE South 29° 52' 32" East, along the west line of said Cedardale Highlands Addition, a distance of 1196.81 feet to the POINT OF BEGINNING and containing 1,932,374 square feet or 44.361 acres of land

ASSIGNMENT OF PURCHASER AND SALE AGREEMENTS, ECONOMIC
DEVELOPMENT AGREEMENT, AND INFRASTRUCTURE INCENTIVE AGREEMENT

EXHIBIT B

EXHIBIT C

LEGAL DESCRIPTION - TRACT C

Being a tract of land situated in the Nathan P. Pierce Survey Abstract Number 1132, City of Lancaster, Dallas County, Texas and part of a 17.50 acre tract described in Partition Deed as Tract 1 to Oscar Victor Eastep, Trustee as recorded in Volume 88010, Page 1250, Deed Records Dallas County Texas, (D.R.D.C.T.), and being more particularly described as follows:

Commencing at the intersection of the east right-of-way line of Houston School Road (100-foot right-of-way) and the north right-of-way line of Cedardale Drive (40-foot right-of-way);

THENCE North 00 degrees 03 minutes 57 seconds East, along said east right-of-way line of Houston School Road, a distance of 1,447.13 feet to a 1/2-inch set iron rod with a yellow plastic cap stamped "HALFF ASSOC. INC." for the POINT OF BEGINNING, said point being the southwest corner of said Tract 1 and the northwest corner of a tract of land described in Partition Deed as Tract 2 to Leila Edith Penn as recorded in Volume 88010, Page 1250, D.R.D.C.T.;

THENCE North 00 degrees 03 minutes 57 seconds East, continuing along said east right-of-way line of Houston School Road, a distance of 413.22 feet to a 5/8-inch found iron rod for corner, said point being the northwest corner of said Tract 1 and the most westerly south corner of a tract of land described in deed as Tract 1 to Lancaster 260 Partnership as recorded in Volume 84074, Page 3388, D.R.D.C.T.;

THENCE North 89 degrees 32 minutes 29 seconds East, departing said east right-of-way line of Houston School Road and along the common line between said Tract 1 and said Lancaster 260 Partnership tract, a distance of 1,730.10 feet to a 1/2-inch found iron pipe for corner;

THENCE South 24 degrees 36 minutes 25 seconds East, continuing along said common line, a distance of 452.83 feet to a point for corner from which a 1/2-inch found iron rod bears North 67 degrees 24 minutes East, a distance of 0.21 feet, said point being the northeast corner of said Leila Edith Penn tract and the southeast corner of said Oscar Victor Eastep tract;

THENCE South 89 degrees 32 minutes 29 seconds West, departing said common line and along the common line of said Leila Edith Penn tract and said Oscar Victor Eastep tract, a distance of 1,919.13 feet to THE POINT OF BEGINNING AND CONTAINING 753,935 square feet or 17.308 acres of land, more or less.

The basis of bearing is the most northerly and westerly south line of a 143.879 acre tract as shown on survey prepared by Brockett Davis Drake, Inc., dated June 7, 2004.

LANCASTER CITY COUNCIL

Item 5

Agenda Communication

November 12, 2012

Consider a resolution ratifying the actions of the Board of Directors of the Lancaster Economic Development Corporation (LEDC) approving an Incentive Grant to Quaker Sales & Distribution, Inc. and authorizing LEDC to enter into a formal incentive agreement with the Company.

This request supports the City Council 2012-2013 Policy Agenda.

Goal: Quality Development

Background

At the October 9, 2012 board meeting, the Lancaster Economic Development Corporation approved an offer to Quaker Sales & Distribution, Inc. as part of an incentive package to induce the company to select Lancaster as the home of their newest DFW distribution center. The grant provides for a twenty-five percent (25%) building permit refund in an amount not to exceed \$15,000. Council is being asked to ratify the board's actions.

Considerations

- **Operational** – Staff will verify payment of permits and remit twenty five percent (25%) of the cost to the company in an amount not to exceed \$15,000.
- **Legal** - The City Attorney has reviewed and approved as to form the resolution and agreement.
- **Financial** – The incentive grant will not exceed \$15,000.
- **Public Information** - There are no public information requirements associated with this agenda item.

Options/Alternatives

1. The City Council may approve the resolution ratifying LEDC's actions..
2. The City Council may deny the resolution.

Recommendation

Staff recommends approval of the resolution as presented.

Attachments

- Resolution
 - LEDC Resolution
 - LEDC – Quaker Agreement
 - Excerpt from LEDC minutes
-

Submitted by:

Ed Brady, Director of Economic Development

RESOLUTION NO.

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, RATIFYING THE ACTIONS OF THE BOARD OF DIRECTORS OF THE LANCASTER ECONOMIC DEVELOPMENT CORPORATION APPROVING AN INCENTIVE GRANT TO QUAKER SALES & DISTRIBUTION, INC. AND AUTHORIZING LEDC TO ENTER INTO A FORMAL INCENTIVE AGREEMENT WITH COMPANY.

WHEREAS, pursuant to LEDC Resolution 2012-02, which was passed and approved on the 7th of November, 2012 by the Board of Directors of the Lancaster Economic Development Corporation (LEDC), offering an incentive grant to Quaker Sales & Distribution, Inc.. (Company); and

WHEREAS, Company has contracted to lease approximately 1,200,000 square feet of space in the ProLogis Building located in ProLogis 20/35 Park in the City of Lancaster; and

WHEREAS, the City of Lancaster and LEDC recognize the importance of their continued role in economic development in the community of Lancaster; and

WHEREAS, the City may provide incentives promoting economic development pursuant to Chapter 380 of the Texas Local Government Code, which authorizes loans and grants of a city's general funds pursuant to a "program" to stimulate business and commercial activity in the municipality; and

WHEREAS, pursuant to Texas Local Government Code, Chapter 501, et seq, as amended, LEDC, as a non-profit corporation, in accordance with the Act, shall promote development and redevelopment within the municipality and its vicinity and create new manufacturing and industrial facilities, distribution centers, warehouse facilities and related facilities, through the use of a sales tax, which development and redevelopment would not otherwise occur solely through private investment in the reasonably foreseeable future; and

WHEREAS, pursuant to the City's Charter, the Act and applicable Texas Statutes, the City has the authority to enter into agreements as the City considers necessary or convenient to implement economic development in Lancaster, Texas; and

WHEREAS, pursuant to the Act and the bylaws of the Lancaster Economic Development Corporation, LEDC has authority to enter into agreements as LEDC considers necessary or convenient to implement economic development in Lancaster, Texas; and

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

SECTION 1. The City Council ratifies the November 7, 2012 actions of the Board of Directors of the LEDC approving an incentive grant to Quaker Sales & Distribution, Inc.

SECTION 2. The City Council authorizes LEDC to enter into an incentive agreement with Company.

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 12th day of November 2012.

ATTEST:

APPROVED:

Dolle K. Downe, City Secretary

Marcus E. Knight, Mayor

APPROVED AS TO FORM:

Robert E. Hager, City Attorney

RESOLUTION NO. 2012-02

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE LANCASTER ECONOMIC DEVELOPMENT CORPORATION OF LANCASTER, TEXAS, IN SUPPORT OF A GRANT TO QUAKER SALES & DISTRIBUTION, INC FROM FUNDS COLLECTED FROM ¼ OF 1 PERCENT ADDITIONAL SALES AND USE TAX FOR THE PROMOTION AND DEVELOPMENT OF NEW AND EXPANDED BUSINESS ENTERPRISES, AS AUTHORIZED BY STATE LAW; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Lancaster Economic Development Corporation recognizes how important business and community development is to the vitality and growth of Lancaster; and

WHEREAS, Quaker Sales & Distribution, Inc has selected Lancaster as the location for their newest distribution facility; and

WHEREAS, Quaker Sales & Distribution, Inc. has requested a cash grant for reimbursement of 25% of permit fees not to exceed \$15,000 associated with the finish out of their lease space in their building in the ProLogis 20/35 Park ; and

WHEREAS, the Board of Directors of the Lancaster Economic Development Corporation (LEDC) are responsible for the review and evaluation of Type A incentive applications; and

WHEREAS, the board of LEDC is also responsible for recommending Type A Incentive Grants to the Lancaster City Council for review and approval;

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE LANCASTER ECONOMIC DEVELOPMENT CORPORATION, THAT:

SECTION 1: That the Board of Directors of the Lancaster Economic Development Corporation approves the resolution and Incentive Agreement which is attached hereto.

SECTION 2: That this resolution shall take effect immediately from and after its passage and it is so duly resolved.

DULY PASSED AND ADOPTED ON THIS 7th DAY OF NOVEMBER, 2012.

ATTEST:


Angie Arenas, Executive Secretary

APPROVED:


Ric Peterson, President

APPROVED AS TO FORM:

Robert E. Hager, City Attorney

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

Incentive Agreement

This Incentive Agreement (the "Agreement") is entered into by and between the Lancaster Economic Development Corporation, a non-profit corporation chartered by the State of Texas, acting by and through its Board of Directors (hereinafter referred to as the "LEDC") and Quaker Sales & Distribution, Inc., a Delaware corporation, acting by and through its authorized officer, Jeff Randolph (hereinafter referred to as "Company").

W I T N E S S E T H :

WHEREAS, the LEDC was established to promote enhanced business opportunities within the corporate limits of the City of Lancaster, Texas; and

WHEREAS, the LEDC recognizes the need to offer business incentives to develop real property within the City of Lancaster; and

WHEREAS, in order to maintain and enhance the economic and employment base within the City of Lancaster, it is in the best interests of the LEDC to enter into this Agreement in accordance with the terms provided herein; and

WHEREAS, Company, wishes to expand its operations as a viable economic project within the City; and

WHEREAS, the Board of Directors of LEDC finds that the intended scope of the Project, hereinafter defined, is to lease for ten years approximately 1,200,000 square feet of warehouse distribution space and the associated infrastructure (collectively, the "Facility") from ProLogis in their building to be constructed located in their Prologis 20/35 Park.

NOW THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, including the attraction of major investment within the City which contributes to the economic development of Lancaster, and to the enhancement of the tax base for the City, the parties agree as follows:

I.

EFFECTIVE DATE; TERM OF AGREEMENT

This Agreement shall become effective upon the approval of the LEDC Board of Directors and consent by the City Council of the City of Lancaster authorizing the LEDC to enter into an agreement with Company, and on the last date of execution of this Agreement by the LEDC and Company, and shall continue for a period of one year (12 months) following the issuance of a Certificate of Occupancy for the Facility.

II. DEFINITIONS

Whenever used in this Agreement, the following term shall have the meaning ascribed to it:

"Premises" shall mean the property described in Exhibit A, attached hereto and made a part hereof for all purposes, including any improvements made thereto.

"Project" shall mean activities associated with the location of Company's operations in Lancaster, Texas.

"Improvements" shall mean the construction and finish out work necessary to commence company operations in the approximately 1.2 million square foot building located in ProLogis 20/35 Park, Lancaster, Texas.

III. PROVISIONS RELATING TO INCENTIVE AGREEMENT

COMPANY Obligations:

- A. Company will occupy approximately 1.2 million square feet of space in the building located in the ProLogis 20/35 Park and will maintain twenty million dollars (\$20,000,000) in annual inventory at their facility in Lancaster, Texas, as reported by Company to the City on an annual basis.
- B. The Premises and improvements constructed thereon at all times shall be used in a manner that is consistent with the City of Lancaster's Comprehensive Zoning Ordinance, as amended and other applicable ordinances.
- C. Company agrees to provide any and all reasonable documentation necessary to confirm data required to implement provisions of the incentive grant.

LEDC's Obligations:

- A. LEDC agrees to pay a grant to Company for reimbursement of 25% of permit fees paid by Company to the City of Lancaster not to exceed a grand total of \$15,000 associated with the preparation of their lease space in the ProLogis 20/35 Park for their business operations. Company will present to LEDC copies of paid receipts for aforementioned fees. LEDC will issue a reimbursement payment for 25% of those receipts submitted not to exceed a grand total of \$15,000, within 30 days of submittal.
- B. All grant of funds shall be made from available sales tax proceeds from the LEDC and, any grant made herein, is not pledged against future sales tax proceeds or the full faith and credit of the City of Lancaster.

IV.

DEFAULT; RECAPTURE OF GRANT FUNDS

- A. In the event Company (i) fails to commence project and improvements on property located in Lancaster, Texas on or before the Commencement Date (as such term is defined in that certain Lease Agreement dated 11 2, 2012 between Prologis and Argent LLC, as Landlord and Company, as Tenant (the "Lease") (ii) fails to complete the Project in accordance with this Agreement; or (iii) materially breaches any of the terms or conditions of this Agreement, then Company, after the expiration of the notice and cure periods described in Paragraph IV (B) below, shall be in default of this Agreement. As liquidated damages in the event of such non-cured default, Company, shall refund to LEDC all grants previously paid by LEDC under this Agreement not to exceed \$15,000. The parties acknowledge that actual damages in the event of default termination would be speculative and difficult to determine. The parties further agree that the recapture of grant funds due LEDC as a result of Company's default under this Agreement, shall be recoverable against Company, its successors and assigns.
- B. Upon breach by Company of any obligations under this Agreement, the LEDC shall notify Company, in writing of same. Company shall have ninety (90) days from receipt of the notice in which to cure any such default.
- C. If Company fails to cure the default within the time provided as specified in Paragraph IV(B) above, or, as such time period may be extended by written agreement of the parties, then the LEDC at its sole option shall have the right to demand repayment of the grant it has made hereunder in accordance with this Section IV(A).
- D. Upon the LEDC's election under the preceding paragraph, all incentives shall be repaid as set forth in Paragraph IV(A), and shall become due and payable ninety (90) days after notice to Company of a non-cured default. The LEDC shall have all remedies provided by law for the collection of the grant funds. The LEDC at its sole discretion has the option to provide a repayment schedule. The obligation of Company, to repay the grant funds to LEDC in the event of default shall survive the termination of this Agreement.

V.

SUCCESSORS AND ASSIGNS

This Agreement shall be binding on and inure to the benefit of the parties to it and their respective heirs, executors, administrators, legal representatives, successors, and assigns. This Agreement may be assigned only with the consent of the LEDC.

VI.

NOTICES

All notices required by this Agreement shall be addressed to the following, or other

such other party or address as either party designates in writing, by certified mail, postage prepaid or by hand delivery:

Company to:

Quaker Sales & Distribution, Inc.
c/o PepsiCo Americas Beverages
One PepsiCo Way
Somers, New York 10589
Attn: General Counsel

LEDC to:

Ed Brady
Lancaster Economic Development Corporation
P.O. Box 940
Lancaster, Texas 75146

VII. LEDC AUTHORIZATION

This Agreement was authorized by resolution of the LEDC, approved by its Board of Directors, authorizing its officer to execute this Agreement on behalf of the LEDC.

VIII. SEVERABILITY

In the event any section, subsection, paragraph, sentence, phrase or word herein is held invalid, illegal or unconstitutional, the balance of this Agreement shall be enforceable and shall be enforced as if the parties intended at all times to delete said invalid section, subsection, paragraph, sentence, phrase or word.

IX. APPLICABLE LAW

THIS AGREEMENT SHALL BE CONSTRUED UNDER THE LAWS OF THE STATE OF TEXAS. Venue for any action under this Agreement shall be the State District Court of Dallas County, Texas. This Agreement is performable in Dallas County, Texas.

X. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

**XI.
ENTIRE AGREEMENT**

This Agreement embodies the complete agreement between the parties and relating to the matters in this Agreement, and except as otherwise provided herein cannot be modified without written agreement of the parties to be attached to and made a part of this Agreement. The provisions of this Agreement are hereby declared covenants running with the Premises and are fully binding on all successors, heirs, and assigns of Company who acquire any right, title, or interest in or to the Premises, or any part hereof, thereby agrees and covenants to abide by and fully perform the provisions of this Agreement. While there is no obligation for the LEDC to fund future expansion, nothing herein precludes Company from requesting further assistance on future projects.

**XII.
RECORDATION OF AGREEMENT**

A certified copy of this Agreement may be recorded in the Deed Records of Dallas County, Texas.

**XIII.
INCORPORATION OF RECITALS**

The determinations recited and declared in the preambles to this Agreement are hereby incorporated herein a part of this Agreement.

**XIV.
EXHIBITS**

All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

[SIGNATURES ON FOLLOWING PAGE]

EXECUTED in duplicate originals this the 1st day of Nov, 2012.

LANCASTER ECONOMIC
DEVELOPMENT CORPORATION

By: 
Ric Peterson, President

QUAKER SALES & DISTRIBUTION, INC.

By: 
Jeff Randolph
Vice President

EXHIBIT A

LEGAL DESCRIPTION

BEING a 78.52 acre tract of land situated in the Nathan P. Pierce Survey, Abstract Number 1132, City of Lancaster, Dallas County, Texas, and being part of Lot 3, Block 1 of PROLOGIS PARK 20/35, an addition to the City of Lancaster recorded in Instrument Number 20080048828 of the Deed Records of Dallas County, Texas (D.R.D.C.T.) and being part of that called 17.50 acre tract of land described as "Tract No. 2" and being part of that called 49.741 acre tract of land described as "Tract No. 3" in Partition Deed to Leila Edith Penn, as recorded in Volume 88010, Page 1250, D.R.D.C.T., as affected by Revocation of Trust and Reconveyance to Trustors Deed, as recorded in Volume 88023, Page 4372, D.R.D.C.T., and being more particularly described as follows:

COMMENCING at a 1/2-inch iron rod with yellow plastic cap stamped "HALFF" (hereinafter referred to as "with cap") found for the intersection of the east right-of-way line of Houston School Road (a called 100-foot wide right-of-way) with the south right-of-way line of Daniieldale Road (a variable width right-of-way at this point) as described in Exhibit "A" of Cause No. cc-02-10579-E of the County Court Records of Dallas County, Texas, said corner also being on the common north line of said "Tract No. 3" and the south line of said "Tract No. 2", same being the common northeast corner of that tract of land described in Right-of-Way Deed to the County of Dallas, as recorded in Volume 96048, Page 4943, D.R.D.C.T. and southeast corner of that tract of land described in Right-of-Way Deed to the County of Dallas, as recorded in Volume 96048, Page 4968, D.R.D.C.T.;

THENCE North 88 degrees 15 minutes 58 seconds East, along said common line and said south right-of-way line of Daniieldale Road, a distance of 13.35 feet to a 1/2-inch iron rod with cap found for corner;

THENCE departing said common line and over and across said "Tract No. 2" and along the said south right-of-way line of Daniieldale Road the following bearing and distances:

North 43 degrees 47 minutes 08 seconds East, a distance of 16.48 feet to a 1/2-inch iron rod with cap found for corner;

North 88 degrees 47 minutes 26 seconds East, a distance of 296.84 feet to a 1/2-inch iron rod with cap found for the point of curvature of a non-tangent circular curve to the left having a radius of 300.00 feet, whose chord bears North 81 degrees 13 minutes 50 seconds East, a distance of 95.13 feet;

Northeasterly, along said curve, through a central angle of 18 degrees 14 minutes 43 seconds, an arc distance of 95.53 feet to a 1/2-inch iron rod with cap found for the point of curvature of a tangent circular curve to the right having a radius of 500.00 feet, whose chord bears North 75 degrees 44 minutes 01 seconds East, a distance of 63.24 feet;

Northeasterly, along said curve, through a central angle of 07 degrees 15 minutes 05 seconds, an arc distance of 63.28 feet to a 1/2-inch iron rod with cap found for the point of curvature of a tangent circular curve to the left having a radius of 1,465.00 feet, whose chord bears North 72 degrees 51 minutes 15 seconds East, a distance of 331.96 feet;

Northeasterly, along said curve, through a central angle of 13 degrees 00 minutes 39 seconds, an arc distance of 332.67 feet to a point for the point of curvature of a non-tangent circular curve to the left having a radius of 1,465.00 feet, whose chord bears North 62 degrees 36 minutes 38 seconds East, a distance of 191.03 feet said point also being the POINT OF BEGINNING of the herein described tract;

Northeasterly, along said curve, through a central angle of 07 degrees 28 minutes 35 seconds, an arc distance of 191.17 feet to a 1/2-inch iron rod with cap found for corner;

North 58 degrees 52 minutes 20 seconds East, a distance of 359.50 feet to 1/2-inch iron rod with cap found on the north line of said "Tract No. 2", and for the northeast corner of said Cause No. cc-02-10579-E;

THENCE North 88 degrees 45 minutes 41 seconds East, departing said common line and along the said north line of "Tract No. 2", a distance of 0.20 feet to a point for most westerly northwest corner of said Lot 3 on the south right-of-way line of said Danieldale Road as shown on said plat of Prologis Park 20/35;

THENCE North 58 degrees 47 minutes 02 seconds East, along the common north line of said Lot 3 and said south right-of-way line of Danieldale Road, a distance of 1,179.33 feet to 1/2-inch iron rod found for the point of curvature of a tangent circular curve to the left having a radius of 635.00 feet, whose chord bears North 30 degrees 50 minutes 23 seconds East, a distance of 595.14 feet;

THENCE Northeasterly, continuing along said common line and along said curve, through a central angle of 55 degrees 53 minutes 19 seconds, an arc distance of 619.40 feet to a 1/2-inch iron rod with cap found for corner;

THENCE South 88 degrees 44 minutes 26 seconds East, departing said common line and over and across said Lot 3, a distance of 54.27 feet to a point for corner;

THENCE South 31 degrees 09 minutes 03 seconds East, continuing over and across said Lot 3, a distance of 1,578.12 feet to a point on the north right-of-way line of Cedardale Drive same being the north line of a 22-foot right-of-way dedication as shown on said plat of Prologis Park 20/35, said corner also being on the south line of said Lot 3;

THENCE South 59 degrees 06 minutes 19 seconds West, along the common said north right-of-way line of said Cedardale Drive and said south line of Lot 3, a distance of 404.51 feet to a 1/2-inch iron rod with cap found for corner;

THENCE South 58 degrees 53 minutes 07 seconds West, continuing along said common

line, a distance of 1,055.41 feet to a 1/2-inch iron rod with cap found for the southwest corner of said Lot 3, said corner also being on the east line of said "Tract No. 3";

THENCE over and across said "Tract No. 3" and along the north line of a proposed 22-foot wide dedication for Cedardale Drive right-of-way the following bearings and distances:

South 58 degrees 44 minutes 48 seconds West, a distance of 770.34 feet to a point for the point of curvature of a tangent circular curve to the right having a radius of 352.08 feet, whose chord bears South 73 degrees 42 minutes 48 seconds West, a distance of 181.85 feet;

Southwesterly, along said curve, through a central angle of 29 degrees 56 minutes 00 seconds, an arc distance of 183.94 feet to a point for corner;

South 88 degrees 40 minutes 48 seconds West, a distance of 249.55 feet to a point for corner;

THENCE North 31 degrees 09 minutes 03 seconds West, departing said proposed north line and continuing over and across said "Tract No. 3", a distance of 608.89 feet to a point for corner;

THENCE North 01 degree 12 minutes 33 seconds West, continuing over and across said "Tract No. 3", a distance of 644.39 feet to the POINT OF BEGINNING AND CONTAINING 3,420,430 square feet or 78.52 acres of land, more or less.

The Basis of Bearings is the most southerly west line of Prologis Park 20/35, an addition to the City of Lancaster, as recorded in Document Number 20080048828 of the Official Public Records of Dallas County, Texas.

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared _____, President of the Lancaster Economic Development Corporation, a Texas non-profit corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said corporation, and that he executed the same as the act of said corporation for the purpose and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND SEAL OF OFFICE this the ____ day of _____, 2012.

My Commission Expires:

Notary Public, State of Texas

ACKNOWLEDGMENT

STATE OF New York §
COUNTY OF Westchester §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of New York, on this day personally appeared Jeff Randolph, Vice President of Quaker Sales & Distribution, Inc., a Delaware corporation, known to me to be the person and agent whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said corporation, and that he executed the same as the act of said corporation for the purpose and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND SEAL OF OFFICE this the 1st day of November, 2012.

My Commission Expires:

[Signature]
Notary Public, State of New York

LUCREZIA CASABIANCA
Notary Public, State of New York
No: 01CA6225497
Qualified in Putnam County
Commission Expires July 19, 2014

**MINUTES OF SPECIAL MEETING
LANCASTER ECONOMIC DEVELOPMENT CORPORATION
211 N. HENRY STREET
6:30 P.M.
TUESDAY, OCTOBER 9, 2012**

Board Members Present:

Ric Peterson, President
Sandi Collier, Secretary/Treasurer
Jon Cole, Board member

Board Members Absent:

Vanessa Sheffield, Vice President
Burleigh C. Foreman, Board member

City Staff Present:

Ed Brady, Director of Economic Development
Angie Arenas, Board Secretary

Ex-Officio Board Members:

Opal Mauldin Robertson, City Manager
Joe Johnson, Executive Director

Call to Order

President Peterson called the meeting to order at 6:32 p.m. on October 9, 2012. A quorum was present.

1. Consider approval of minutes from the LEDC Regular Meeting held February 2, 2012.

MOTION: Secretary/Treasurer Collier made a motion, seconded by Board member Cole, to approve the minutes as presented. The vote was cast 3 for, 0 against. [Sheffield and Foreman absent]

2. Review incentive financial summary.

Director Brady reviewed the incentive summary. No action taken.

3. Discuss and consider approval of funding request by City of Lancaster for a one year payment of refund of business personal property tax to business enterprise.

MOTION: Secretary/Treasurer Collier made a motion, seconded by Board member Cole, for the approval of funding request by City of Lancaster for a one year payment of refund of business personal property tax to business enterprise. The vote was cast 3 for, 0 against. [Sheffield and Foreman absent]

EXECUTIVE SESSION

4. Meeting closed for Executive Session pursuant to §Section 551.087, Texas Government Code, to deliberate the offer of a financial incentive or other to new business prospect(s).

5. Reopen the meeting and take action on item(s) discussed in Executive Session.

The Board convened into Executive Session at 6:57 p.m. and reconvened into open session at 7:21 p.m.

LEDC Meeting
October 9, 2012
Page 2

MOTION: Secretary/Treasurer Collier made a motion, seconded by Board member Cole, to approve Project Alligator Incentive Offer in an amount not to exceed \$30,000. The vote was cast 3 for, 0 against. [Sheffield and Foreman absent]


MOTION: Secretary/Treasurer Collier made a motion, seconded by Board member Cole, to approve Project Web Facility Incentive Offer as presented. The vote was cast 3 for, 0 against. [Sheffield and Foreman absent]

6. Adjournment.

MOTION: Secretary/Treasurer Collier made a motion, seconded by Board member Cole, to adjourn. The vote was cast 3 for, 0 against. [Sheffield and Foreman absent].

Meeting was adjourned at 7:23 p.m.

ATTEST:



Angie Arenas, Board Secretary

APPROVED:



Ric Peterson, President

LANCASTER CITY COUNCIL

Agenda Communication

November 12, 2012

Item 6

Consider a resolution authorizing the City Manager to execute an economic development agreement pursuant to Chapter 380, Texas Local Government Code by and between the City of Lancaster, Texas and Quaker Sales & Distribution, Inc. establishing a grant in an amount equal to fifty percent (50%) of business personal property taxes paid on certain described property for a period of ten years.

This request supports the City Council 2012-2013 Policy Agenda.

Goal: Quality Development

Background

Staff has been working on "Project Alligator", a warehouse distribution operation of a major national food product manufacturer. The company later disclosed themselves as Quaker Sales & Distribution, Inc. By working with the developer, Prologis, Lancaster became a finalist for a 1.2 million square foot new facility. The project is projected to create approximately 85 new jobs, \$5,000,000 in equipment and over \$20,000,000 of taxable inventory.

During discussions with Quaker Sales & Distribution, Inc. regarding incentives, the City has proposed a fifty percent (50%) business personal property tax grant for a period of ten (10) years to induce the selection of Lancaster as the site for their new facility. Lancaster was in competition with other DFW communities for this project. The new Quaker Sales & Distribution, Inc. will locate in Prologis 20/35 Park. The term of the grant coincides with the lease term for the new facility.

Considerations

- **Operational** – Quaker will annually submit receipts for business personal property tax payments in order to exercise the grant. On March 1 of the calendar year for a period of ten years, the City will remit fifty percent (50%) of the payment to the company.
- **Legal** – The City Attorney has reviewed and approved as to form the resolution and agreement.
- **Financial** – Based on the estimated value of the business personal property (BPP) submitted by the company, the BPP fifty percent (50%) grant would represent approximately \$1,075,000 over the ten (10) year period in new revenue to the City.

- **Public Information** – There are no public information requirements associated with this agenda item.

Options/Alternatives

1. The City Council may approve the resolution and agreement as presented.
2. The City Council may reject the resolution and agreement.

Recommendation

Staff recommends approval of the resolution and agreement as presented.

Attachments

- Resolution
 - Agreement
-

Submitted by:

Opal Mauldin Robertson, City Manager
Ed Brady, Economic Development Director

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE ECONOMIC DEVELOPMENT AGREEMENT(S) WHICH IS ATTACHED HERETO AS EXHIBIT A PURSUANT TO CHAPTER 380, TEXAS LOCAL GOVERNMENT CODE, BY AND BETWEEN THE CITY OF LANCASTER AND QUAKER SALES & DISTRIBUTION, INC. ("QUAKER"); PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Quaker is a leading distributor of food and beverage products; and

WHEREAS, Quaker desires to lease certain real property and improvements located in the ProLogis 20/35 Park, in the City of Lancaster, Texas (hereinafter defined as the "Premises"), and construct improvements thereon for distribution uses for a period of at least ten (10) years; and

WHEREAS, Quaker's development of the Premises will provide employment opportunities within the City; and

WHEREAS, the location of Quaker on the Premises will result in a significant capital investment, and Quaker will maintain Tangible Personal Property on the Premises with an estimated minimum value of at least \$20,000,000.00 during the term of this Agreement; and

WHEREAS, Quaker has advised the City that a contributing factor that would induce Quaker to lease a location in the Premises would be an agreement by the City to provide an economic development grant to Quaker; 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 III, Section 52-a of the Texas Constitution and Texas Local Government Code Chapter 380 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 Quaker in accordance with this Agreement is in accordance with the City Economic Development Program and will: (i) further the objectives of the City; (ii) benefit the City and the City's inhabitants; and (iii) will promote local economic development and stimulate business and commercial activity in the City; and

WHEREAS, City desires to authorize the City Manager to negotiate and enter into an Economic Development Agreement with Quaker pursuant to Chapter 380 of the Texas Local Government Code.

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

SECTION 1. That the City Manager is hereby authorized to execute an Economic Development Agreement, which is attached hereto and incorporated herein as Exhibit A, pursuant to Chapter 380 of the Texas Local Government Code (and any amendments thereto, including any related instruments), on behalf of the City of Lancaster, Texas, with Quaker Sales & Distribution, Inc. (and its affiliated and related entities).

SECTION 2. That all provisions of the resolutions of the City of Lancaster, Texas, in conflict with the provisions of this resolution be, and the same are hereby, repealed, and all other provisions not in conflict with the provisions of this resolution shall remain in full force and effect.

SECTION 3. That should any word, sentence, paragraph, subdivision, clause, phrase or section of this resolution be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said resolution which shall remain in full force and effect.

SECTION 4. This resolution shall take effect immediately from and after its passage, as the law and charter in such cases provide.

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 12th day of November 2012.

ATTEST:

APPROVED:

Dolle K. Downe, City Secretary

Marcus E. Knight, Mayor

APPROVED AS TO FORM:

Robert E. Hager, City Attorney

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

Economic Development Agreement

This Economic Development Agreement (“Agreement”) is made by and between the City of Lancaster, Texas (“City”), and Quaker Sales & Distribution, Inc., a Delaware corporation, (the “Company”), acting by and through their respective authorized representatives.

W I T N E S S E T H:

WHEREAS, the Company is under contract to lease certain real property and improvements located in the ProLogis 20/35 Park, in the City of Lancaster, Texas, and being more particularly described in Exhibit “A” (the “Property”); and

WHEREAS, the Company intends to lease the Premises, renovate one or more of the existing improvements located on the Premises and construct new improvements and related facilities and infrastructure for a food and beverage distribution center (the “Project”); and

WHEREAS, the Company has advised the City that a contributing factor that would induce the Company to undertake the Project would be an agreement by the City to provide an economic development grant to the Company to defray a portion of the costs of acquisition, installation and maintenance of certain Tangible Personal Property (hereinafter defined); and

WHEREAS, the City desires to encourage business expansions within the City that will add property tax base and generate additional sales tax and other revenue for the City; and

WHEREAS, the promoting the expansion of new or existing businesses within the City will promote economic development, stimulate commercial activity, generate additional sales tax and will enhance the Premises tax base and economic vitality of the City; 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 III, Section 52-a of the Texas Constitution and Texas Local Government Code Chapter 380 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 Company in accordance with this Agreement is in accordance with the City Economic Development Program and will: (i) further the objectives of the City; (ii) benefit the City and the City’s inhabitants; and (iii) will 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 are hereby acknowledged, the parties agree as follows:

Article I Definitions

For purposes of this Agreement, each of the following terms shall have the meaning set forth herein unless the context clearly indicates otherwise:

“Annual Grant(s)” shall mean annual economic development grants to be provided by the City in an amount equivalent to fifty percent (50%) ad valorem taxes assessed against the Tangible Personal Property for a given tax year for a period of ten (10) consecutive tax years beginning with the first calendar year following the Commencement Date, to be paid as set forth herein.

“Casualty” shall mean the Improvements are wholly or partially destroyed by fire, tornado, hurricane, earthquake, flood or similar casualty that renders the Improvements unfit for the intended purpose.

“City” shall mean the City of Lancaster, Texas.

“Commencement Date” shall mean the later of (a) January 1 of the calendar year immediately following the date a certificate of occupancy is issued by the City for the Company’s occupancy of the improvements; and (b) January 1, 2014.

“Company” shall mean Quaker Sales & Distribution, Inc., a Delaware corporation.

“Company Affiliate” shall mean any parent of Company or any wholly-owned subsidiary of either Company or of Company’s parent.

“Effective Date” shall mean the last date of execution hereof.

“Event of 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.

“Event of 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, terrorist act, or threat thereof, riot, civil commotion, insurrection, government action or

inaction (unless caused by the intentionally wrongful acts or omissions of the party), fires, earthquake, tornado, hurricane, explosions, floods, strikes, slowdowns or work stoppages.

“Expiration Date” shall mean ninth (9th) year after the payment of the first Annual Grant.

“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 and located on the Premises. 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.

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

“Premises” shall mean the real property described on Exhibit “A.”

“Payment Request” shall mean a written request from Company to the City for payment of an Annual Grant.

“Project” shall mean the development of the Premises, renovation of existing improvements located on the Premises and the construction of new improvements and related facilities and infrastructure for the operation of a product distribution center.

“Required Use” shall mean Company’s continuous occupancy of the Improvements and the Company’s continuous operation of a product distribution center on the 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, including inventory and supplies, owned or leased by the Company and located on the Premises at the Project on January 1 of each applicable tax year, as reported to the City by Company on an annual basis.

“Taxable Value” shall mean the assessed value of Tangible Personal Property as certified by the appraisal district, or its successor, for a given year.

Article II

Term

The term of this Agreement shall begin on the last date of execution hereof (the "Effective Date") and end on the tenth (10th) anniversary of the date of issuance by the City of a final certificate of occupancy for the Project.

Article III

Economic Development Grants

3.1 **Annual Grants.** Subject to the Company's continued satisfaction of all the terms and conditions of this Agreement, the City agrees to provide the Company with the Annual Grants to be paid on 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 first full calendar year following the Commencement Date, provided the City has timely received the ad valorem taxes assessed against the Tangible Personal Property in full for the respective tax year (i.e., the tax year immediately preceding the year in which an Annual Grant is made; and such ad valorem taxes with respect to that immediately preceding tax year are used to determine the amount of each Annual Grant). For illustration purposes only, assume that the ad valorem taxes assessed against the Tangible Personal Property for tax year 2013 is \$10,000.00 then the amount of the first Annual Grant for the Tangible Personal Property for Tax Year 2013 would be, \$5,000.00 (\$10,000.00 x 50%), and would be paid on March 1, 2014.

3.2 **Grant Limitations.** Under no circumstances shall City obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Further, City shall not be obligated to pay any commercial bank, lender or similar institution for any loan or credit agreement made by the Company. None of the City's obligations under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution.

3.3 **Current Revenue.** The Annual Grants made hereunder shall be paid solely from lawfully available funds that have been appropriated by the City; 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 Annual Grant for the then ensuing fiscal year. Consequently, notwithstanding any other provision of this Agreement, the City shall have no obligation or liability to pay any Grants except as allowed by law. The City shall not be required to pay any Annual Grants if prohibited under federal or state legislation or a decision of a court of competent jurisdiction.

3.4 **Tax Protest.** In the event the Company 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, or any portion thereof, with the applicable appraisal district (or its successor), and such protest and/or contest results in a final determination that changes the appraised value and/or the Taxable Value of the Tangible Personal Property or the amount of ad valorem taxes assessed and due for the Tangible Personal Property, or portion thereof, after an Annual Grant has been paid for such Tangible Personal Property for such tax year, the Annual

Grant for such tax year shall be adjusted (increased or decreased as the case may be) accordingly on the date of payment of the next Annual Grant payment date, or within sixty (60) business days after such determination in the event no further Annual Grant payments are due under the Agreement.

3.5 **Refunds.** In the event the City determines in its sole discretion that the amount of an Annual Grant paid by the City to the Company was incorrect, the Company shall, within sixty (60) days after receipt of written notification thereof from the City specifying the amount by which such Annual Grant exceeded the correct amount to which the Company was entitled (together with such records, reports and other information necessary to support such determination), pay such amount to the City. If the City determines that the amount by which such Annual Grant was less than the correct amount to which the Company was entitled (together with such records, reports and other information necessary to support such determination), the City shall, within sixty (60) days, pay the adjustment to the Company. If the Company disputes the City's determination, the parties shall seek to amicably resolve the matter, subject to either party's right to pursue any available rights or remedies in connection therewith.

Article IV

Conditions to the Economic Development Grant

The obligation of the City to provide the Grants shall be conditioned upon the Company's continued compliance with and satisfaction of each of the terms and conditions of this Agreement and each of the conditions set forth below:

4.1 During the term of this Agreement following the Commencement Date and continuing thereafter until the Expiration Date, or earlier termination, the Company agrees to continuously lease and occupy the Improvements and shall not allow the operation of the Improvements in conformance with the Required Use to cease for more than sixty (60) days except in connection with, and to the extent of a Casualty or an Event of Force Majeure.

4.2 The Company shall maintain the lease of the Premises.

4.3 The Company shall not have an uncured breach or default of this Agreement.

4.4 The Company shall comply with all the terms and conditions of this Agreement.

4.5 The Company shall, for each year under this Agreement, maintain a minimum of \$twenty million dollars (\$20,000,000) of Tangible Personal Property at the Premises.

4.6 The Company shall be in good standing by being current in payment of any and all outstanding impositions to the City.

Article V Termination

5.1 This Agreement terminates on the Expiration Date, and may prior to the Expiration Date, be terminated upon any one or more of the following:

- (a) by mutual written agreement of the parties;
- (b) by either party, if the other party defaults or breaches any of the terms or conditions of this Agreement and such default or breach is not cured within thirty (30) days after written notice thereof;
- (c) by City, if any Impositions owed to the City or the State of Texas by Company shall have become delinquent (provided, however, Company retains the right to timely and properly protest and contest any such taxes or Impositions);
- (d) by City, if Company suffers an Event of Bankruptcy or Insolvency; or
- (e) 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 In the event the Agreement is terminated by the City pursuant to Section 5.1(b), (c), or (d), the Company shall not be entitled to receive any subsequent Annual Grants under this Agreement but shall have no obligation to refund to the City any Annual Grants (or portion thereof or interest accrued thereon) previously paid by the City to the Company.

5.3 In the event the Agreement is terminated by the City pursuant to Section 5.1(e), the Company shall, only if such legislation or court decision requires, immediately refund to the City an amount equal to the annual Grant(s) paid by the City to the Company immediately preceding the date of such termination. The repayment obligation of Company set forth in this section 5.3 hereof shall survive termination.

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.

6.2 **Limitation on Liability.** It is understood and agreed between the parties that the Company and City, in satisfying the conditions of this Agreement, have acted independently, and the City assumes no responsibilities or liabilities to third parties in connection with these actions.

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.

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto.

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 such other address as such party may subsequently designate in writing) or on the day actually received if sent by courier or otherwise hand delivered.

If intended for City, to:

City of Lancaster
Attn: Opal Mauldin Robertson
City Manager
P. O. Box 940
211 North Henry Street
Lancaster, Texas 75146-0946

With a copy to:

Robert E. Hager
Nichols, Jackson, Dillard,
Hager & Smith, L.L.P
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

If intended for Company:

Quaker Sales & Distribution, Inc.
c/o PepsiCo Americas Beverages
One Pepsi Way
Somers, New York 10589
Attn: General Counsel

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 giving effect to any conflicts of law rule or principle that might result in the application of the laws of another jurisdiction; and 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 **Exhibits.** All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

6.11 **Successors and Assigns.** This Agreement may not be assigned without the City's prior written consent, except to a Company Affiliate. Neither the Company nor its legal representatives or successors in interest shall, by operation of law or otherwise, assign, mortgage, pledge, encumber or otherwise transfer this Agreement or any part hereof, or the interest of the Company under this Agreement in either case except to a Company Affiliate, without obtaining the City's prior written consent, which may be given or withheld in the City's sole discretion. Any attempted assignment by the Company, except to a Company Affiliate, in violation of the terms and provisions of this Agreement shall be void and shall constitute a material breach of this Agreement.

6.12 **Recitals.** The recitals to this Agreement are incorporated herein.

6.13 **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.

6.14 **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.

6.15 **Conditions Precedent.** This Agreement is subject to and conditioned upon the following conditions which are conditions precedent to the obligations of the parties: (i) Company shall diligently and faithfully, in a good and workmanlike manner, make or cause its landlord to make finish out improvements to the Premises in accordance with all applicable state and local laws and regulations or a valid waiver thereof; (ii) Company shall execute a minimum ten (10) year lease agreement; and (iii) Company shall obtain a Certificate of Occupancy for the Premises.

Signature page to follow

EXECUTED on this _____ day of _____, 2012.

CITY OF LANCASTER, TEXAS

By: _____
Opal Mauldin Robertson, City Manager

Attest:

By: _____
Dolle Downe, City Secretary

Approved as to Form:

By: _____
Robert E. Hager, City Attorney

EXECUTED on this 1st day of Nov, 2012.

QUAKER SALES & DISTRIBUTION, INC.

By: Jeff Randolph
Jeff Randolph
Vice President

EXHIBIT A

LEGAL DESCRIPTION

BEING a 78.52 acre tract of land situated in the Nathan P. Pierce Survey, Abstract Number 1132, City of Lancaster, Dallas County, Texas, and being part of Lot 3, Block 1 of PROLOGIS PARK 20/35, an addition to the City of Lancaster recorded in Instrument Number 20080048828 of the Deed Records of Dallas County, Texas (D.R.D.C.T.) and being part of that called 17.50 acre tract of land described as "Tract No. 2" and being part of that called 49.741 acre tract of land described as "Tract No. 3" in Partition Deed to Leila Edith Penn, as recorded in Volume 88010, Page 1250, D.R.D.C.T., as affected by Revocation of Trust and Reconveyance to Trustors Deed, as recorded in Volume 88023, Page 4372, D.R.D.C.T., and being more particularly described as follows:

COMMENCING at a 1/2-inch iron rod with yellow plastic cap stamped "HALFF" (hereinafter referred to as "with cap") found for the intersection of the east right-of-way line of Houston School Road (a called 100-foot wide right-of-way) with the south right-of-way line of Daniieldale Road (a variable width right-of-way at this point) as described in Exhibit "A" of Cause No. cc-02-10579-E of the County Court Records of Dallas County, Texas, said corner also being on the common north line of said "Tract No. 3" and the south line of said "Tract No. 2", same being the common northeast corner of that tract of land described in Right-of-Way Deed to the County of Dallas, as recorded in Volume 96048, Page 4943, D.R.D.C.T. and southeast corner of that tract of land described in Right-of-Way Deed to the County of Dallas, as recorded in Volume 96048, Page 4968, D.R.D.C.T.;

THENCE North 88 degrees 15 minutes 58 seconds East, along said common line and said south right-of-way line of Daniieldale Road, a distance of 13.35 feet to a 1/2-inch iron rod with cap found for corner;

THENCE departing said common line and over and across said "Tract No. 2" and along the said south right-of-way line of Daniieldale Road the following bearing and distances:

North 43 degrees 47 minutes 08 seconds East, a distance of 16.48 feet to a 1/2-inch iron rod with cap found for corner;

North 88 degrees 47 minutes 26 seconds East, a distance of 296.84 feet to a 1/2-inch iron rod with cap found for the point of curvature of a non-tangent circular curve to the left having a radius of 300.00 feet, whose chord bears North 81 degrees 13 minutes 50 seconds East, a distance of 95.13 feet;

Northeasterly, along said curve, through a central angle of 18 degrees 14 minutes 43 seconds, an arc distance of 95.53 feet to a 1/2-inch iron rod with cap found for the point of curvature of a tangent circular curve to the right having a

radius of 500.00 feet, whose chord bears North 75 degrees 44 minutes 01 seconds East, a distance of 63.24 feet;

Northeasterly, along said curve, through a central angle of 07 degrees 15 minutes 05 seconds, an arc distance of 63.28 feet to a 1/2-inch iron rod with cap found for the point of curvature of a tangent circular curve to the left having a radius of 1,465.00 feet, whose chord bears North 72 degrees 51 minutes 15 seconds East, a distance of 331.96 feet;

Northeasterly, along said curve, through a central angle of 13 degrees 00 minutes 39 seconds, an arc distance of 332.67 feet to a point for the point of curvature of a non-tangent circular curve to the left having a radius of 1,465.00 feet, whose chord bears North 62 degrees 36 minutes 38 seconds East, a distance of 191.03 feet said point also being the POINT OF BEGINNING of the herein described tract;

Northeasterly, along said curve, through a central angle of 07 degrees 28 minutes 35 seconds, an arc distance of 191.17 feet to a 1/2-inch iron rod with cap found for corner;

North 58 degrees 52 minutes 20 seconds East, a distance of 359.50 feet to 1/2-inch iron rod with cap found on the north line of said "Tract No. 2", and for the northeast corner of said Cause No. cc-02-10579-E;

THENCE North 88 degrees 45 minutes 41 seconds East, departing said common line and along the said north line of "Tract No. 2", a distance of 0.20 feet to a point for most westerly northwest corner of said Lot 3 on the south right-of-way line of said Danieldale Road as shown on said plat of Prologis Park 20/35;

THENCE North 58 degrees 47 minutes 02 seconds East, along the common north line of said Lot 3 and said south right-of-way line of Danieldale Road, a distance of 1,179.33 feet to 1/2-inch iron rod found for the point of curvature of a tangent circular curve to the left having a radius of 635.00 feet, whose chord bears North 30 degrees 50 minutes 23 seconds East, a distance of 595.14 feet;

THENCE Northeasterly, continuing along said common line and along said curve, through a central angle of 55 degrees 53 minutes 19 seconds, an arc distance of 619.40 feet to a 1/2-inch iron rod with cap found for corner;

THENCE South 88 degrees 44 minutes 26 seconds East, departing said common line and over and across said Lot 3, a distance of 54.27 feet to a point for corner;

THENCE South 31 degrees 09 minutes 03 seconds East, continuing over and across said Lot 3, a distance of 1,578.12 feet to a point on the north right-of-way line of Cedardale Drive same being the north line of a 22-foot right-of-way dedication as shown

on said plat of Prologis Park 20/35, said corner also being on the south line of said Lot 3;

THENCE South 59 degrees 06 minutes 19 seconds West, along the common said north right-of way line of said Cedardale Drive and said south line of Lot 3, a distance of 404.51 feet to a 1/2-inch iron rod with cap found for corner;

THENCE South 58 degrees 53 minutes 07 seconds West, continuing along said common line, a distance of 1,055.41 feet to a 1/2-inch iron rod with cap found for the southwest corner of said Lot 3, said corner also being on the east line of said "Tract No. 3";

THENCE over and across said "Tract No. 3" and along the north line of a proposed 22-foot wide dedication for Cedardale Drive right-of-way the following bearings and distances:

South 58 degrees 44 minutes 48 seconds West, a distance of 770.34 feet to a point for the point of curvature of a tangent circular curve to the right having a radius of 352.08 feet, whose chord bears South 73 degrees 42 minutes 48 seconds West, a distance of 181.85 feet;

Southwesterly, along said curve, through a central angle of 29 degrees 56 minutes 00 seconds, an arc distance of 183.94 feet to a point for corner;

South 88 degrees 40 minutes 48 seconds West, a distance of 249.55 feet to a point for corner;

THENCE North 31 degrees 09 minutes 03 seconds West, departing said proposed north line and continuing over and across said "Tract No. 3", a distance of 608.89 feet to a point for corner;

THENCE North 01 degree 12 minutes 33 seconds West, continuing over and across said "Tract No. 3", a distance of 644.39 feet to the POINT OF BEGINNING AND CONTAINING 3,420,430 square feet or 78.52 acres of land, more or less.

The Basis of Bearings is the most southerly west line of Prologis Park 20/35, an addition to the City of Lancaster, as recorded in Document Number 20080048828 of the Official Public Records of Dallas County, Texas.

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared _____, City Manager of the City of Lancaster, a Texas non-profit corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said corporation, and that he executed the same as the act of said corporation for the purpose and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND SEAL OF OFFICE this the ____ day of _____, 2012.

Notary Public, State of Texas

My Commission Expires:

ACKNOWLEDGMENT

STATE OF NY §
COUNTY OF Westchester §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of New York, on this day personally appeared Jeff Randolph, Vice President of Quaker Sales & Distribution, Inc., a Delaware corporation, known to me to be the person and agent whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said corporation, and that he executed the same as the act of said corporation for the purpose and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND SEAL OF OFFICE this the 1st day of November, 2012.

My Commission Expires:

Lucrezia Casabianca
Notary Public, State of ~~Texas~~ New York

LUCREZIA CASABIANCA
Notary Public, State of New York
No: 01CA6225497
Qualified in Putnam County
Commission Expires July 19, 2014

LANCASTER CITY COUNCIL

Item 7

Agenda Communication

November 12, 2012

Consider a resolution authorizing the City Manager to execute an economic development agreement pursuant to Chapter 380, Texas Local Government Code by and between the City of Lancaster and Quaker Sales & Distribution, Inc. (“Quaker”) authorizing a ninety percent (90%) grant on certain taxable real property and improvements for a period of ten (10) years.

This request supports the City Council 2012-2013 Policy Agenda.

Goal: Quality Development

Background

Staff has been working on “Project Alligator”, a warehouse distribution operation of a major national food product manufacturer. The company later disclosed themselves as Quaker Sales & Distribution, Inc. By working with the developer, Prologis, Lancaster became a finalist for a 1.2 million square foot new facility. The estimated taxable value of the property and improvements over the ten year period is \$35,615,873. The project is projected to create approximately 85 new jobs, \$5,000,000 in equipment and over \$20,000,000 of taxable inventory.

During discussions with Quaker Sales & Distribution, Inc. regarding incentives, the City has proposed a ninety percent (90%) real property tax grant for a period of ten (10) years to induce the selection of Lancaster as the site for their new facility. Lancaster was in competition with other DFW communities for this project. The new Quaker Sales & Distribution, Inc. will locate in Prologis 20/35 Park. The term of the grant coincides with the lease term for the new facility.

Considerations

- **Operational** - Quaker will annually submit receipts for property tax payments in order to exercise the grant. Following verification of payment, and not later than March 1 of the calendar year, the City will remit ninety percent (90%) of the real property and improvements tax payment to the company for a period of ten (10) years.
- **Legal** - The City Attorney has reviewed and approved as to form the resolution and agreement.

- **Financial** - Annually a ninety percent (90%) grant would be provided to the company and ten percent (10%) in new revenue to the City.
- **Public Information** - There are no public information requirements associated with this agenda item.

Options/Alternatives

1. The City Council may approve the resolution and agreement as presented.
2. The City Council may reject the resolution and agreement.

Recommendation

Staff recommends approval of the resolution and agreement as presented.

Attachments

- Resolution
 - Agreement
-

Submitted by:

Opal Mauldin Robertson, City Manager
Ed Brady, Economic Development Director

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE ECONOMIC DEVELOPMENT AGREEMENT(S) WHICH IS ATTACHED HERETO AS EXHIBIT A PURSUANT TO CHAPTER 380, TEXAS LOCAL GOVERNMENT CODE, BY AND BETWEEN THE CITY OF LANCASTER AND QUAKER SALES & DISTRIBUTION, INC. ("QUAKER"); PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Quaker is a leading distributor of food and beverage products; and

WHEREAS, Quaker desires to lease certain real property and improvements located in the ProLogis 20/35 Park, in the City of Lancaster, Texas (hereinafter defined as the "Premises"), and construct improvements thereon for distribution uses for a period of at least ten (10) years; and

WHEREAS, Quaker's development of the Premises will provide employment opportunities within the City; and

WHEREAS, the location of Quaker on the Premises will result in a significant capital investment, and Quaker will make improvements on the Premises; and

WHEREAS, Quaker has advised the City that a contributing factor that would induce Quaker to lease a location in the Premises would be an agreement by the City to provide an economic development grant to Quaker; 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 III, Section 52-a of the Texas Constitution and Texas Local Government Code Chapter 380 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 Quaker in accordance with this Agreement is in accordance with the City Economic Development Program and will: (i) further the objectives of the City; (ii) benefit the City and the City's inhabitants; and (iii) will promote local economic development and stimulate business and commercial activity in the City; and

WHEREAS, City desires to authorize the City Manager to negotiate and enter into an Economic Development Agreement with Quaker pursuant to Chapter 380 of the Texas Local Government Code.

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

SECTION 1. That the City Manager is hereby authorized to execute an Economic Development Agreement, which is attached hereto and incorporated herein as Exhibit A, pursuant to Chapter 380 of the Texas Local Government Code (and any amendments thereto, including any related instruments), on behalf of the City of Lancaster, Texas, with Quaker Sales & Distribution, Inc. (and its affiliated and related entities).

SECTION 2. That all provisions of the resolutions of the City of Lancaster, Texas, in conflict with the provisions of this resolution be, and the same are hereby, repealed, and all other provisions not in conflict with the provisions of this resolution shall remain in full force and effect.

SECTION 3. That should any word, sentence, paragraph, subdivision, clause, phrase or section of this resolution be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said resolution which shall remain in full force and effect.

SECTION 4. This resolution shall take effect immediately from and after its passage, as the law and charter in such cases provide.

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 12th day of November 2012.

ATTEST:

APPROVED:

Dolle K. Downe, City Secretary

Marcus E. Knight, Mayor

APPROVED AS TO FORM:

Robert E. Hager, City Attorney

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

Economic Development Agreement

This Economic Development Agreement (“Agreement”) is made by and between the City of Lancaster, Texas (“City”), and Quaker Sales & Distribution, Inc., a Delaware corporation, (the “Company”), acting by and through their respective authorized representatives.

WITNESSETH:

WHEREAS, the Company is under contract to lease certain real property and improvements located in the ProLogis 20/35 Park, in the City of Lancaster, Texas, and being more particularly described in **Exhibit “A”** (the “Property”); and

WHEREAS, the Company intends to lease the Premises, renovate one or more of the existing improvements located on the Premises and construct new improvements and related facilities and infrastructure for a food and beverage distribution center (the “Project”); and

WHEREAS, the Company has advised the City that a contributing factor that would induce the Company to undertake the Project would be an agreement by the City to provide an economic development grant to the Company to reimburse it for a portion of the Real Estate Taxes (hereinafter defined); and

WHEREAS, the City desires to encourage business expansions within the City that will add property tax base and generate additional sales tax and other revenue for the City; and

WHEREAS, the promoting the expansion of new or existing businesses within the City will promote economic development, stimulate commercial activity, generate additional sales tax and will enhance the Premises tax base and economic vitality of the City; 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 III, Section 52-a of the Texas Constitution and Texas Local Government Code Chapter 380 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 Company in accordance with this Agreement is in accordance with the City Economic Development Program and will: (i) further the objectives of the City; (ii) benefit the City and the City’s inhabitants; and (iii) will 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 are hereby acknowledged, the parties agree as follows:

Article I Definitions

For purposes of this Agreement, each of the following terms shall have the meaning set forth herein unless the context clearly indicates otherwise:

“Annual Grant(s)” shall mean annual economic development grants to be provided by the City in an amount equivalent to ninety percent (90%) of the ad valorem Taxes assessed against the real property and Premises for a given tax year for a period of ten (10) consecutive tax years beginning with the first calendar year following the Commencement Date, to be paid as set forth herein.

“Casualty” shall mean the Improvements are wholly or partially destroyed by fire, tornado, hurricane, earthquake, flood or similar casualty that renders the Improvements unfit for the intended purpose.

“City” shall mean the City of Lancaster, Texas.

“Commencement Date” shall mean the later of (a) January 1 of the calendar year immediately following the date a certificate of occupancy is issued by the City for the Company’s occupancy of the improvements; and (b) January 1, 2014.

“Company” shall mean Quaker Sales & Distribution, Inc., a Delaware corporation.

“Company Affiliate” shall mean any parent of Company or any wholly-owned subsidiary of either Company or of Company’s parent.

“Effective Date” shall mean the last date of execution hereof.

“Event of 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.

“Event of 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, terrorist act, or threat thereof, riot, civil commotion, insurrection, government action or

inaction (unless caused by the intentionally wrongful acts or omissions of the party), fires, earthquake, tornado, hurricane, explosions, floods, strikes, slowdowns or work stoppages.

“Expiration Date” shall mean ninth (9th) year after the payment of the first Annual Grant.

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

“Premises” shall mean the real property and improvements described on Exhibit “A.”

“Payment Request” shall mean a written request from Company to the City for payment of an Annual Grant.

“Project” shall mean the development of the Premises, renovation of existing improvements located on the Premises and the construction of new improvements and related facilities and infrastructure for the operation of a product distribution center.

“Real Estate Taxes” shall mean all real estate ad valorem taxes assessed by the City on the Property against the land and the improvements on the premises.

“Required Use” shall mean Company’s continuous occupancy of the Improvements and the Company’s continuous operation of a product distribution center on the Premises.

“Taxable Value” shall mean the assessed value of the Premises as certified by the appraisal district, or its successor, for a given year.

Article II

Term

The term of this Agreement shall begin on the last date of execution hereof (the “Effective Date”) and end on the tenth (10th) anniversary of the date of issuance by the City of a final certificate of occupancy for the Project.

Article III

Economic Development Grants

3.1 **Annual Grants.** Subject to the Company’s continued satisfaction of all the terms and conditions of this Agreement, the City agrees to provide the Company with the Annual

Grants to be paid on 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 first full calendar year following the Commencement Date, provided the City has timely received the Real Estate Taxes assessed against the Premises in full for the respective tax year (i.e., the tax year immediately preceding the year in which an Annual Grant is made; and such Real Estate Taxes with respect to that immediately preceding tax year are used to determine the amount of each Annual Grant). For illustration purposes only, assume that the Real Estate taxes assessed against the Premises for tax year 2013 is \$100,000.00 then the amount of the first Annual Grant for the Premises for Tax Year 2013 would be, \$90,000.00 (\$100,000.00 x 90%), and would be paid on March 1, 2014.

3.2 **Grant Limitations.** Under no circumstances shall City obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Further, City shall not be obligated to pay any commercial bank, lender or similar institution for any loan or credit agreement made by the Company. None of the City's obligations under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution.

3.3 **Current Revenue.** The Annual Grants made hereunder shall be paid solely from lawfully available funds that have been appropriated by the City; 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 Annual Grant for the then ensuing fiscal year. Consequently, notwithstanding any other provision of this Agreement, the City shall have no obligation or liability to pay any Grants except as allowed by law. The City shall not be required to pay any Annual Grants if prohibited under federal or state legislation or a decision of a court of competent jurisdiction.

3.4 **Tax Protest.** In the event the Company or the owner of the Premises timely and properly protests or contests (including any motion to correct the appraisal roll) the Taxable Value and/or the taxation of the Premises, or any portion thereof, with the applicable appraisal district (or its successor), and such protest and/or contest results in a final determination that changes the appraised value and/or the Taxable Value of the Premises or the amount of ad valorem taxes assessed and due for the Premises, or portion thereof, after an Annual Grant has been paid for such Premises for such tax year, the Annual Grant for such tax year shall be adjusted (increased or decreased as the case may be) accordingly on the date of payment of the next Annual Grant payment date, or within sixty (60) business days after such determination in the event no further Annual Grant payments are due under the Agreement.

3.5 **Refunds.** In the event the City determines in its sole discretion that the amount of an Annual Grant paid by the City to the Company was incorrect, the Company shall, within sixty (60) days after receipt of written notification thereof from the City specifying the amount by which such Annual Grant exceeded the correct amount to which the Company was entitled (together with such records, reports and other information necessary to support such determination), pay such amount to the City. If the City determines that the amount by which such Annual Grant was less than the correct amount to which the Company was entitled (together with such records, reports and other information necessary to support such determination), the City shall, within sixty (60) days, pay the adjustment to the Company. If the Company disputes the City's determination, the parties

shall seek to amicably resolve the matter, subject to either party's right to pursue any available rights or remedies in connection therewith.

Article IV Conditions to the Economic Development Grant

The obligation of the City to provide the Grants shall be conditioned upon the Company's continued compliance with and satisfaction of each of the terms and conditions of this Agreement and each of the conditions set forth below:

4.1 During the term of this Agreement following the Commencement Date and continuing thereafter until the Expiration Date, or earlier termination, the Company agrees to continuously lease and occupy the Improvements and shall not allow the operation of the Improvements in conformance with the Required Use to cease for more than sixty (60) days except in connection with, and to the extent of a Casualty or an Event of Force Majeure.

4.2 The Company shall maintain the lease on the Premises.

4.3 The Company shall not have an uncured breach or default of this Agreement.

4.4 The Company shall comply with all the terms and conditions of this Agreement.

4.5 The Company shall be in good standing by being current in payment of any and all outstanding impositions to the City.

4.6 The Company shall not have created any hazardous environmental conditions on the Premises.

Article V Termination

5.1 This Agreement terminates on the Expiration Date, and may prior to the Expiration Date, be terminated upon any one or more of the following:

- (a) by mutual written agreement of the parties;
- (b) by either party, if the other party defaults or breaches any of the terms or conditions of this Agreement and such default or breach is not cured within thirty (30) days after written notice thereof;
- (c) by City, if any Impositions owed to the City or the State of Texas by Company shall have become delinquent (provided, however, Company retains the right to timely and properly protest and contest any such taxes or Impositions);
- (d) by City, if Company suffers an Event of Bankruptcy or Insolvency; or
- (e) 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 In the event the Agreement is terminated by the City pursuant to Section 5.1(b), (c), or (d), the Company shall not be entitled to receive any subsequent Annual Grants under this Agreement but shall have no obligation to refund to the City any Annual Grants (or portion thereof or interest accrued thereon) previously paid by the City to the Company.

5.3 In the event the Agreement is terminated by the City pursuant to Section 5.1(e), the Company shall, only if such legislation or court decision requires, immediately refund to the City an amount equal to the annual Grant(s) paid by the City to the Company immediately preceding the date of such termination. The repayment obligation of Company set forth in this section 5.3 hereof shall survive termination.

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.

6.2 **Limitation on Liability.** It is understood and agreed between the parties that the Company and City, in satisfying the conditions of this Agreement, have acted independently, and the City assumes no responsibilities or liabilities to third parties in connection with these actions.

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. The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto.

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 such other address as such party may subsequently designate in writing) or on the day actually received if sent by courier or otherwise hand delivered.

If intended for City, to:

City of Lancaster
Attn: Opal Mauldin Robertson
City Manager
P. O. Box 940
211 North Henry Street
Lancaster, Texas 75146-0946

With a copy to:

Robert E. Hager
Nichols, Jackson, Dillard,
Hager & Smith, L.L.P
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

If intended for Company:

Quaker Sales & Distribution, Inc.
c/o PepsiCo Americas Beverages
One Pepsi Way
Somers, New York 10589
Attn: General Counsel

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 giving effect to any conflicts of law rule or principle that might result in the application of the laws of another jurisdiction; and 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 **Exhibits.** All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

6.11 **Successors and Assigns.** This Agreement may not be assigned without the City's prior written consent, except to a Company Affiliate. Neither the Company nor its legal representatives or successors in interest shall, by operation of law or otherwise, assign, mortgage, pledge, encumber or otherwise transfer this Agreement or any part hereof, or the interest of the Company under this Agreement in either case except to a Company Affiliate, without obtaining the City's prior written consent, which may be given or withheld in the City's sole discretion. Any attempted assignment by the Company, except to a Company Affiliate, in violation of the terms and provisions of this Agreement shall be void and shall constitute a material breach of this Agreement. Notwithstanding the foregoing, in the event that the Company ceases to lease the Property prior to the end of the Term of this Agreement, Company may assign this Agreement to the then-current owner of the Property.

6.12 **Recitals.** The recitals to this Agreement are incorporated herein.

6.13 **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.

6.14 **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.

6.15 **Conditions Precedent.** This Agreement is subject to and conditioned upon the following conditions which are conditions precedent to the obligations of the parties: (i) Company shall diligently and faithfully, in a good and workmanlike manner, make or cause its landlord to make finish out improvements to the Premises in accordance with all applicable state and local laws and regulations or a valid waiver thereof; (ii) Company shall execute a minimum ten (10) year lease agreement; and (iii) Company shall obtain a Certificate of Occupancy for the Premises.

6.16 **Lease Renewal.** The City and Company agree to consider any additional agreements (or modify/extend existing agreements) with Company relating to the Premises.

Signature page to follow

EXECUTED on this _____ day of _____, 2012.

CITY OF LANCASTER, TEXAS

By: _____
Opal Mauldin Robertson, City Manager

Attest:

By: _____
Dolle Downe, City Secretary

Approved as to Form:

By: _____
Robert E. Hager, City Attorney

EXECUTED on this 1st day of Nov, 2012.

QUAKER SALES & DISTRIBUTION, INC.

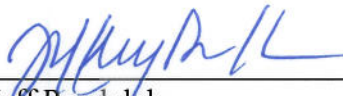
By: 
Jeff Randolph
Vice President

EXHIBIT A

LEGAL DESCRIPTION

BEING a 78.52 acre tract of land situated in the Nathan P. Pierce Survey, Abstract Number 1132, City of Lancaster, Dallas County, Texas, and being part of Lot 3, Block 1 of PROLOGIS PARK 20/35, an addition to the City of Lancaster recorded in Instrument Number 20080048828 of the Deed Records of Dallas County, Texas (D.R.D.C.T.) and being part of that called 17.50 acre tract of land described as "Tract No. 2" and being part of that called 49.741 acre tract of land described as "Tract No. 3" in Partition Deed to Leila Edith Penn, as recorded in Volume 88010, Page 1250, D.R.D.C.T., as affected by Revocation of Trust and Reconveyance to Trustors Deed, as recorded in Volume 88023, Page 4372, D.R.D.C.T., and being more particularly described as follows:

COMMENCING at a 1/2-inch iron rod with yellow plastic cap stamped "HALFF" (hereinafter referred to as "with cap") found for the intersection of the east right-of-way line of Houston School Road (a called 100-foot wide right-of-way) with the south right-of-way line of Daniieldale Road (a variable width right-of-way at this point) as described in Exhibit "A" of Cause No. cc-02-10579-E of the County Court Records of Dallas County, Texas, said corner also being on the common north line of said "Tract No. 3" and the south line of said "Tract No. 2", same being the common northeast corner of that tract of land described in Right-of-Way Deed to the County of Dallas, as recorded in Volume 96048, Page 4943, D.R.D.C.T. and southeast corner of that tract of land described in Right-of-Way Deed to the County of Dallas, as recorded in Volume 96048, Page 4968, D.R.D.C.T.;

THENCE North 88 degrees 15 minutes 58 seconds East, along said common line and said south right-of-way line of Daniieldale Road, a distance of 13.35 feet to a 1/2-inch iron rod with cap found for corner;

THENCE departing said common line and over and across said "Tract No. 2" and along the said south right-of-way line of Daniieldale Road the following bearing and distances:

North 43 degrees 47 minutes 08 seconds East, a distance of 16.48 feet to a 1/2-inch iron rod with cap found for corner;

North 88 degrees 47 minutes 26 seconds East, a distance of 296.84 feet to a 1/2-inch iron rod with cap found for the point of curvature of a non-tangent circular curve to the left having a radius of 300.00 feet, whose chord bears North 81 degrees 13 minutes 50 seconds East, a distance of 95.13 feet;

Northeasterly, along said curve, through a central angle of 18 degrees 14 minutes 43 seconds, an arc distance of 95.53 feet to a 1/2-inch iron rod with cap found for the point of curvature of a tangent circular curve to the right having a

radius of 500.00 feet, whose chord bears North 75 degrees 44 minutes 01 seconds East, a distance of 63.24 feet;

Northeasterly, along said curve, through a central angle of 07 degrees 15 minutes 05 seconds, an arc distance of 63.28 feet to a 1/2-inch iron rod with cap found for the point of curvature of a tangent circular curve to the left having a radius of 1,465.00 feet, whose chord bears North 72 degrees 51 minutes 15 seconds East, a distance of 331.96 feet;

Northeasterly, along said curve, through a central angle of 13 degrees 00 minutes 39 seconds, an arc distance of 332.67 feet to a point for the point of curvature of a non-tangent circular curve to the left having a radius of 1,465.00 feet, whose chord bears North 62 degrees 36 minutes 38 seconds East, a distance of 191.03 feet said point also being the POINT OF BEGINNING of the herein described tract;

Northeasterly, along said curve, through a central angle of 07 degrees 28 minutes 35 seconds, an arc distance of 191.17 feet to a 1/2-inch iron rod with cap found for corner;

North 58 degrees 52 minutes 20 seconds East, a distance of 359.50 feet to 1/2-inch iron rod with cap found on the north line of said "Tract No. 2", and for the northeast corner of said Cause No. cc-02-10579-E;

THENCE North 88 degrees 45 minutes 41 seconds East, departing said common line and along the said north line of "Tract No. 2", a distance of 0.20 feet to a point for most westerly northwest corner of said Lot 3 on the south right-of-way line of said Danieldale Road as shown on said plat of Prologis Park 20/35;

THENCE North 58 degrees 47 minutes 02 seconds East, along the common north line of said Lot 3 and said south right-of-way line of Danieldale Road, a distance of 1,179.33 feet to 1/2-inch iron rod found for the point of curvature of a tangent circular curve to the left having a radius of 635.00 feet, whose chord bears North 30 degrees 50 minutes 23 seconds East, a distance of 595.14 feet;

THENCE Northeasterly, continuing along said common line and along said curve, through a central angle of 55 degrees 53 minutes 19 seconds, an arc distance of 619.40 feet to a 1/2-inch iron rod with cap found for corner;

THENCE South 88 degrees 44 minutes 26 seconds East, departing said common line and over and across said Lot 3, a distance of 54.27 feet to a point for corner;

THENCE South 31 degrees 09 minutes 03 seconds East, continuing over and across said Lot 3, a distance of 1,578.12 feet to a point on the north right-of-way line of Cedardale Drive same being the north line of a 22-foot right-of-way dedication as shown

on said plat of Prologis Park 20/35, said corner also being on the south line of said Lot 3;

THENCE South 59 degrees 06 minutes 19 seconds West, along the common said north right-of way line of said Cedardale Drive and said south line of Lot 3, a distance of 404.51 feet to a 1/2-inch iron rod with cap found for corner;

THENCE South 58 degrees 53 minutes 07 seconds West, continuing along said common line, a distance of 1,055.41 feet to a 1/2-inch iron rod with cap found for the southwest corner of said Lot 3, said corner also being on the east line of said "Tract No. 3";

THENCE over and across said "Tract No. 3" and along the north line of a proposed 22-foot wide dedication for Cedardale Drive right-of-way the following bearings and distances:

South 58 degrees 44 minutes 48 seconds West, a distance of 770.34 feet to a point for the point of curvature of a tangent circular curve to the right having a radius of 352.08 feet, whose chord bears South 73 degrees 42 minutes 48 seconds West, a distance of 181.85 feet;

Southwesterly, along said curve, through a central angle of 29 degrees 56 minutes 00 seconds, an arc distance of 183.94 feet to a point for corner;

South 88 degrees 40 minutes 48 seconds West, a distance of 249.55 feet to a point for corner;

THENCE North 31 degrees 09 minutes 03 seconds West, departing said proposed north line and continuing over and across said "Tract No. 3", a distance of 608.89 feet to a point for corner;

THENCE North 01 degree 12 minutes 33 seconds West, continuing over and across said "Tract No. 3", a distance of 644.39 feet to the POINT OF BEGINNING AND CONTAINING 3,420,430 square feet or 78.52 acres of land, more or less.

The Basis of Bearings is the most southerly west line of Prologis Park 20/35, an addition to the City of Lancaster, as recorded in Document Number 20080048828 of the Official Public Records of Dallas County, Texas.

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared _____, City Manager of the City of Lancaster, a Texas non-profit corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said corporation, and that he executed the same as the act of said corporation for the purpose and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND SEAL OF OFFICE this the ____ day of _____, 2012.

Notary Public, State of Texas

My Commission Expires:

ACKNOWLEDGMENT

STATE OF New York §
COUNTY OF Westchester §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of New York, on this day personally appeared Jeff Randolph, Vice President of Quaker Sales & Distribution, Inc., a Delaware corporation, known to me to be the person and agent whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said corporation, and that he executed the same as the act of said corporation for the purpose and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND SEAL OF OFFICE this the 1ST day of November, 2012.

My Commission Expires:


Notary Public, State of ~~Texas~~ New York

LUCREZIA CASABIANCA
Notary Public, State of New York
No: 01CA6225497
Qualified in Putnam County
Commission Expires July 19, 2014