



**NOTICE OF REGULAR MEETING AGENDA**  
**LANCASTER CITY COUNCIL**  
**MUNICIPAL CENTER CITY COUNCIL CHAMBERS**

**211 N. HENRY STREET, LANCASTER, TEXAS**

**Monday, January 23, 2012 – 7:00 P.M.**



**TREE CITY USA.**

**CALL TO ORDER**

**INVOCATION: MINISTERIAL ALLIANCE**

**PLEDGE OF ALLEGIANCE: COUNCILMEMBER WALTER WEAVER**

**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.)

- 1C. Consider approval of minutes from the City Council Regular Meeting held January 9, 2012.
- 2C. Consider an ordinance establishing the boundaries of the City of Lancaster as depicted on the Boundary Map and adopting said map as the Official Boundary Map of the City; providing for the establishment of the extraterritorial jurisdiction of said City based on the boundary of the City.
- 3C. Consider Resolution 2012-01-10 approving the terms and conditions of the City owned T-hangar commercial leases from Building 670 at the Lancaster Regional Airport.

**PUBLIC HEARING**

4. Conduct a Public Hearing and consider an ordinance amending the Lancaster Development Code, by amending Article 14.400, Section 14.401 "Land Use Schedule," by amending the Land Use Table; by amending Article 14.400, Section 14.402, "Use Standards," Subsection (b)(3) Bed and Breakfast Operation, providing new locations for bed and breakfast operations to be allowed; by amending Article 14.500, Section 14.505 "Industrial Districts," removing requirements for masonry material on exterior walls for existing structures.

**ACTION:**

5. Discuss and consider Resolution 2012-01-11 approving the terms and conditions of the Letter Agreement providing for consent of assignment of the Tax Abatement Agreement with CS Lancaster LLC to Duke Realty Limited Partnership; and authorizing the City Manager to execute the Letter Agreement.

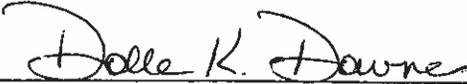
**ADJOURNMENT**

**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 January 18, 2012 @ 5:00 pm, 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**  
Agenda Communication for  
January 23, 2012

**1**

AG12-001

**Consider approval of minutes from the City Council Regular Meeting held January 9, 2012.**

**Background**

Attached for your review and consideration are minutes from the:

- City Council Regular Meeting held January 9, 2012

**Prepared and submitted by:**

Dolle K. Downe, City Secretary  
January 17, 2012

## MINUTES

### LANCASTER CITY COUNCIL MEETING OF JANUARY 9, 2012

The City Council of the City of Lancaster, Texas, met in Regular session in the Council Chambers of City Hall on January 9, 2012 at 7:00 p.m. with a quorum present to-wit:

#### **Councilmembers Present:**

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

#### **City Staff Present:**

Opal Mauldin Robertson, City Manager  
Alicia Oyedele, Assistant to the City Manager  
Sheree Haynes, Finance Director  
Thomas Griffith, Fire Chief  
Sean Johnson, Parks and Recreation Director  
Clovia English, Public Works Director  
Phillip Curtis, Water / Wastewater Superintendent  
Rona Stringfellow Govan, Development Services Director  
J. B. Brewer, Building Official  
Larry King, Assistant Building Official  
Nathaniel Barnett, Senior Planner  
Mark Divita, Airport Manager  
Dolle Downe, City Secretary

#### **Call to Order:**

Mayor Knight called the meeting to order at 7:00 p.m. on January 9, 2012.

#### **Invocation:**

Pastor John Richardson with Zion Chapel gave the invocation.

#### **Pledge of Allegiance:**

Deputy Mayor Pro Tem Nina Morris led the Pledge of Allegiance.

#### **Citizens Comments:**

James Lewis, 818 Katy Street, commented that disabled citizens in the community do not get sufficient recognition, stating that he is a disabled citizen who is unable to read; stated that he is working on updates to the Black History Museum at Rocky Crest School and hopes to reopen the museum either in February during Black History Month or the first week in March during Public Schools Week; invited everyone to attend a meeting regarding the museum on January 28 at 2:30 p.m. at Rocky Crest School.

Carol Pinkard, 1277 Cypress, commented that she had begun to see some improvements to City streets but that the water bill and storm water fee are too high; stated that if citizens pay more, they should see improvements; commented on trash service being just once a week pick-up now and the rates keep going up; stated that there are a lot of nice neighborhoods in the City, but she is seeing some foreclosures now; urged Council to consider the economy when they are making decisions, particularly about rates for services.

**Consent Agenda:**

City Secretary Downe read the consent agenda.

- 1C. Consider approval of minutes from the City Council Regular Meeting held December 12, 2011.
- 2C. Consider Resolution 2012-01-01 approving the terms and conditions of the City owned T-hangar commercial leases from buildings 660-700 at the Lancaster Regional Airport.
- 3C. Consider Resolution 2012-01-02 declaring certain board, commission or committee position(s) vacant due to excessive absences.
- 4C. Consider Resolution 2012-01-03 authorizing repairs to various City radio towers due to Spring 2011 storm damage to Blair Communications, Inc. in a base amount not to exceed \$76,578.59; and providing for a contingency amount not to exceed \$30,918.65.
- 5C. Consider Resolution 2012-01-04 authorizing the award of Bid 2012-02 for water meters to Texas Water Products.
- 6C. Consider Resolution 2012-01-05 authorizing the award of Bid 2012-05 for water and sewer parts to MSC Waterworks.
- 7C. Consider Resolution 2012-01-06 authorizing the award of Bid 2012-06 for water and sewer pipe to MSC Waterworks.
- 8C. Consider Resolution 2012-01-07 approving contracts for pipe rehabilitation on the Martin Barry-Francis Water Line Replacement and the Lexington Water Line Replacement projects with Insituform Technologies, LLC in an amount not to exceed \$971,165.
- 9C. Consider an ordinance amending the Code of Ordinances by repealing Chapter 3, Article 3.1900, Energy Conservation Code, in its entirety and replacing the same with a new Article 3.1900, Energy Conservation Code, providing for the adoption of the International Energy Conservation Code, 2009 Edition and the amendments thereto.
- 10C. Consider Resolution 2012-01-08 approving the assignment of certain Water Line Utility Easements located in the City of Lancaster, Texas to the City of Dallas Water Utilities; and authorizing the Mayor to execute said utility easements.

Councilmember Mejia pulled item 8C from the consent agenda.

**MOTION:** Councilmember Mejia made a motion, seconded by Deputy Mayor Pro Tem Morris, to approve consent items 1C – 7C, 9C and 10C. The vote was cast 7 for, 0 against.

Councilmember Mejia commented that the City is investing money in much needed infrastructure [item 8C] and this will help improve the quality of life in the City.

**MOTION:** Councilmember Mejia made a motion, seconded by Councilmember Daniels, to approve Resolution 2012-01-07 approving contracts for pipe rehabilitation on the Martin Barry-Francis Water Line Replacement and the Lexington Water Line Replacement projects with Insituform Technologies in an amount not to exceed \$971,165. The vote was cast 7 for, 0 against.

11. **Discuss and consider Resolution 2012-01-09 authorizing the Mayor to sign and execute the Declaration of Covenants, Conditions, and Restrictions deed for property within the City's golf course that is bounded on the westerly side of Ten Mile Creek and nature area which is an active flood plain.**

Senior Planner Barnett stated that as part of a tree mitigation process in collaboration with the Texas Department of Transportation, TxDOT was allowed to plant additional trees in an area within the City's golf course from another project where trees had been removed and to preserve trees in this designated area to remain in a natural state. It is now necessary to file the Declaration of Covenants with Dallas County to fulfill TxDOT's obligation.

**MOTION:** Councilmember Mejia made a motion, seconded by Deputy Mayor Pro Tem Morris, to approve Resolution 2012-01-09 authorizing the Mayor to execute the Declaration of Covenants, Conditions, and Restrictions deed for property within the City's golf course that is bounded on the westerly side of Ten Mile Creek and the nature area. The vote was cast 7 for, 0 against.

12. **Discuss and consider appointment(s) to the Lancaster Recreational Development Corporation / Parks and Recreation Advisory Board.**

Councilmember Jaglowski nominated Jerry Giles for the vacant regular position on the Lancaster Recreational Development Corporation / Parks and Recreation Advisory Board with a term expiring July 2012. The roll call vote was cast 6 for, 1 against [Weaver].

Mayor Pro Tem Hairston nominated Donald May for the vacant alternate position on the Lancaster Recreational Development Corporation / Parks and Recreation Advisory Board with a term expiring July 2012. The roll call vote was cast 7 for, 0 against.

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

The meeting was adjourned at 7:13 p.m.

**ATTEST:**

**APPROVED:**

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Dolle K. Downe, City Secretary

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Marcus E. Knight, Mayor

**LANCASTER CITY COUNCIL**  
Agenda Communication for  
January 23, 2012

**2**

AG12-002

**Consider an ordinance establishing the boundaries of the City of Lancaster as depicted on the Boundary Map, and adopting the Boundary Map as the Official Boundary Map of the City; providing for the establishment of the extraterritorial jurisdiction of said City based on the boundary of the City.**

**This request supports the City Council 2011-2012 Policy Agenda.**

**Goal: Quality Development**

**Background**

On November 14, 2011, the City Council approved annexation of approximately 3 square miles of land. As the City annexes property, the boundary line of the City and the area of the City's extraterritorial jurisdiction (ETJ) are adjusted on the official boundary map.

**Considerations**

- **Operational** - Attached is a revised Boundary Map reflecting the changes. The Boundary Map is provided to the Secretary of State and Comptroller's Office following adoption.
- **Legal** - The City Attorney has indicated the City must adopt the revised Boundary and ETJ Map in accordance with state law. The City Attorney prepared the adopting ordinance.
- **Financial** - There are no financial considerations for this item.
- **Public Information** - There are no public notices required for action on this item.

**Recommendation**

Staff recommends approval of the ordinance updating the City of Lancaster Boundary Map.

**Attachments**

- Ordinance
- Boundary Map
- Boundary Map Coordinates

**Prepared and submitted by:**  
Nathaniel Barnett, Senior Planner

**Date:** January 10, 2012

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF LANCASTER, TEXAS, ESTABLISHING THE BOUNDARIES OF THE CITY OF LANCASTER AS DEPICTED ON THE BOUNDARY MAP, WHICH IS ATTACHED HERETO AND INCORPORATED HEREIN AS EXHIBIT A, AND THE SAME IS HEREBY ADOPTED AS THE OFFICIAL BOUNDARY MAP OF THE CITY; PROVIDING FOR THE ESTABLISHMENT OF THE EXTRATERRITORIAL JURISDICTION OF SAID CITY BASED ON THE BOUNDARY OF THE CITY; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the bounds and limits of the original City of Lancaster were established and described in the original incorporation proceedings of said City of Lancaster, filed of record in the office of the clerk in the County of Dallas, Texas, and those boundaries therein established; and

**WHEREAS**, the City has from time to time annexed additional territory under the laws of the State of Texas concerning the boundary of said City; and

**WHEREAS**, the City wishes to adopt and reestablish an official map of the City reflecting those original incorporation and subsequent annexations and said adjacent areas as reflected on Exhibit A, which is attached hereto and incorporated herein; and,

**WHEREAS**, the City as a result of State law has certain extraterritorial jurisdiction as a result of the establishment of said boundaries; and

**WHEREAS**, after review and consideration, it is the opinion of the City Council of the City of Lancaster that the Boundary Map, which is attached hereto and incorporated herein as Exhibit A, accurately reflects the original incorporation and subsequent expansions and contractions of the city limits.

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

**SECTION 1.** That the boundaries of the City are hereby established as required by the Home Rule Charter and state law as depicted on the Boundary Map, which is attached hereto and incorporated herein as Exhibit A, which is hereby adopted as the official boundary map of the City of Lancaster, and the city limits and boundary of said City is hereby established and republished as set forth herein.

**SECTION 2.** That the boundaries of said City as established in Exhibit A are the true and correct city limits of the City of Lancaster, Texas.

**SECTION 3.** That the extraterritorial jurisdiction as reflected on Exhibit A is the true and correct established extraterritorial jurisdiction of the City of Lancaster as provided for by state law.

**SECTION 4.** That if any article, paragraph, subdivision, clause, phrase or word in this ordinance, or application thereto any persons or circumstances be adjudged invalid or held unconstitutional for any reason by a court of competent jurisdiction, such judgment or holding shall not affect the validity of the remaining portions of this ordinance; and, the City Council hereby declares it would have passed such remaining portions of this ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

**SECTION 5.** That this ordinance shall take effect immediately from and after its passage as the law and charter in such cases provide.

**DULY PASSED** by the City Council of the City of Lancaster, Texas, this the 23<sup>rd</sup> day of January 2012.

**APPROVED:**

\_\_\_\_\_  
MARCUS E. KNIGHT, MAYOR

**ATTEST:**

\_\_\_\_\_  
DOLLE K. DOWNE, CITY SECRETARY

**APPROVED AS TO FORM:**

\_\_\_\_\_  
ROBERT E. HAGER, CITY ATTORNEY



City of Lancaster  
**Boundary Map**  
 01/18/2012

- City Boundary Points
- City Limits
- ▨ Lancaster ETJ

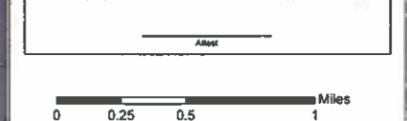
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2	2489978.8300	8922802.8371	68	2500131.2040	6890461.3828
3	2489978.8300	8922802.8371	69	2500565.2080	6890496.5909
4	2490902.9402	8923378.5999	70	2500994.1821	6890922.9849
5	2495505.2010	8922797.4338	71	2502926.0231	6890181.8850
6	2495489.8450	8922059.3269	72	2510032.4718	6889150.5334
7	2495214.5539	8921983.1871	73	2510908.7889	6889830.2358
8	2496984.2750	8919495.3959	74	2511622.1841	6889616.9179
9	2496986.1710	8920088.3210	75	2511710.8281	6889181.3736
10	2498726.2129	8920834.2001	76	2511687.8791	6889793.4288
11	2498805.9531	8920500.8519	77	2511899.9025	6889820.8908
12	2498706.2489	8920496.1121	78	2512223.4879	6889858.5081
13	2498898.9841	8920297.8941	79	2512275.7181	6889895.0859
14	2499954.9800	8918250.7731	80	2512807.7149	6889818.9330
15	2500020.1171	8918110.0826	81	2512888.3890	6889728.7730
16	2500090.2210	8917874.0879	82	2513533.5359	6889787.1981
17	2501523.3560	8914304.8499	83	2513515.9109	6889806.6842
18	2502404.3001	891498.8971	84	2515051.5713	6889231.1950
19	2502975.2731	8912821.3989	85	2514579.5854	6889037.4132
20	2509784.7859	8912518.9240	86	2515004.4909	6889845.4080
21	2511570.3556	8912541.7871	87	2515408.3281	6889003.1748
22	2511587.3750	8911373.8750	88	2515525.9681	6889074.7350
23	2512533.9012	8910000.6351	89	2517227.4849	6887863.9848
24	2512535.9911	8909888.3341	90	2517344.5329	6887834.0050
25	2514614.8242	8909800.3249	91	2517530.8731	6887823.9347
26	2514687.2709	8907264.8200	92	2518048.8289	6887835.0329
27	2515211.5549	8907290.1011	93	2518247.8851	6887594.3790
28	2516170.6251	8906912.8849	94	2518208.9859	6887849.1820
29	2516946.5971	8906919.5909	95	2521863.3779	6889450.9829
30	2518983.7058	8907258.3197	96	2520747.6810	6891227.3430
31	2518509.1856	8907250.5887	Follow Creek Centerline		
32	2518562.8831	8904328.2919	97	2517753.7290	6890404.5300
33	2518941.8539	8904396.1180	98	2518948.0829	6894125.8909
34	2518942.9881	8904330.5286	99	2519480.9421	6894218.9790
35	2521292.8380	8904353.2700	100	2519477.5231	6894274.4989
36	2521318.5318	8903392.3640	101	2518991.4509	6894808.7236
37	2521325.3878	8903316.4772	102	2518203.9659	6893951.2138
38	2521356.7041	8901414.3310	103	2517948.8821	6892222.1459
39	2521314.1189	8901357.4309	104	2517545.9640	6890594.0480
40	2520645.1837	8901221.8941	105	2517520.0802	6889857.44831
41	2523173.3261	8907291.2340	106	2517263.3281	6890774.7829
42	2523244.9029	8907194.1889	107	2516878.0040	6890961.3419
43	2524477.9399	8905996.1188	108	2516354.2429	6894968.9191
44	2524495.8100	8905986.3610	Follow Creek Centerline		
45	2523187.6886	8905076.4836	109	2512515.4101	6890796.7691
46	2523003.8899	8904887.7000	110	2510070.9550	6893485.0449
47	2522594.3801	8904104.8188	111	2510024.3681	6892350.7382
48	2522330.1201	8903908.7850	112	2509015.4410	6897053.9080
49	2522247.3023	8903900.8585	113	2508879.8501	6897219.8890
50	2522298.0339	8903422.8851	114	2508718.2939	6897470.1391
51	2522299.8838	8903221.8630	Follow Creek Centerline		
52	2522428.7511	8902115.8841	115	2505471.8339	6897844.3520
53	2522455.3282	8902072.8300	116	2503937.3199	6894473.5578
54	2522783.9161	8900942.7821	117	2503947.2129	6893979.4791
55	2523200.1459	8900867.8999	118	2498910.1899	6887980.1108
56	2523291.9181	8900500.2738	119	2498780.1209	6887734.4329
57	2523621.1051	8900507.8298	120	2498011.9098	6886265.8300
58	2522118.8710	8887405.8878	Follow County Line		
59	2520265.7829	8886458.2150	121	2485456.5931	6886126.8941
60	2508223.9281	8886331.4731	Follow County Line		
61	2508223.9281	8886331.4731	122	2484847.7811	6919718.5281
62	2505363.5704	8886345.2086	123	2484855.4950	6920045.0090
63	2505364.1829	8887205.9881	124	2485123.7250	6920060.6589
64	2504421.4269	8888730.5880	125	2483180.0186	6920152.8001
65	2504480.8641	8888748.8019	126	2483328.8701	6920236.7301
66	2505089.5749	8888754.8298	127	2480226.1310	6920451.3770
			128	2487118.2982	6920498.6831
			129	2487357.8218	6920522.3640

Projected Coordinate System  
 NAD 1983 StatePlane TX  
 North Central FIPS 4202 Feet  
 Projection: Lambert Conformal Conic  
 False Easting: 166500.00000000  
 False Northing: 6561666.68888887

Central Meridian: -98.50000000  
 Standard Parallel 1: 32.13333333  
 Standard Parallel 2: 33.86666667  
 Latitude of Origin: 31.86666667  
 Lower Unit: Foot US



This is to certify that this is the Official City Limits Map of the City of Lancaster, Texas as adopted by City Council on \_\_\_\_\_, Ordinance No. \_\_\_\_\_



ID	X Coordinate	Y Coordinate
1	2487319.3499	6922754.9501
2	2489976.8360	6922802.8371
3	2489976.5470	6922821.0920
4	2490900.9402	6923376.5099
5	2495505.2010	6922797.4339
6	2495489.8450	6922059.3209
7	2495214.5539	6921983.1971
8	2496694.2750	6919496.9609
9	2498698.1710	6920689.3210
10	2498726.2129	6920634.2001
11	2498805.9631	6920500.8519
12	2498796.2469	6920495.1121
13	2498898.7221	6920297.9941
14	2499954.9900	6918250.7731
15	2500020.1171	6918110.0939
16	2500080.2210	6917974.0879
17	2501523.9560	6914304.8499
18	2502404.9001	6912498.8971
19	2509785.2731	6912621.3969
20	2509784.7859	6912516.9240
21	2511570.3558	6912541.7871
22	2511587.5750	6911573.8750
23	2512533.9012	6910000.6351
24	2512535.9911	6909888.3341
25	2514614.8242	6909900.3249
26	2514667.2709	6907264.8200
27	2516211.5549	6907280.1011
28	2516170.0251	6909912.8849
29	2516946.5971	6909919.5909
30	2516993.7056	6907258.3197
31	2516509.1658	6907250.5887
32	2516562.6831	6904328.2619
33	2518941.8539	6904396.1190
34	2518942.9661	6904330.5266
35	2521292.8380	6904353.2700
36	2521316.5316	6903392.5640
37	2521325.3878	6903318.4772
38	2521356.7041	6901414.3310
39	2521314.1169	6901357.4309
40	2520845.1837	6901221.6041
41	2523173.3261	6897291.2340
42	2523244.9020	6897194.1689
43	2524477.9399	6895996.1168
44	2524485.6109	6895956.3610
45	2523167.6889	6895076.4838
46	2523003.0869	6894897.7000
47	2522594.3801	6894104.8188
48	2522330.1201	6893908.7850
49	2522247.3023	6893900.8585
50	2522298.0339	6893422.8851
51	2522299.8639	6893221.8930

ID	X Coordinate	Y Coordinate
67	2505053.1891	6889813.4569
68	2506131.2040	6890461.3828
69	2508565.2680	6890496.5989
70	2508984.1921	6889922.9849
71	2509296.0231	6890161.8850
72	2510032.4718	6889160.5334
73	2510906.7689	6889830.2358
74	2511682.7841	6888816.9179
75	2511710.0281	6889181.3739
76	2511687.6791	6889793.4288
77	2511699.9025	6889820.6908
78	2512223.6879	6889858.5061
79	2512275.7101	6888988.0609
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83	2513515.9100	6888066.6842
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90	2517344.5329	6887934.0050
91	2517530.8731	6887623.9347
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94	2519209.8950	6887849.1820
95	2521863.3779	6889450.9829
96	2520747.6810	6891227.3439
Follow Creek Centerline		
97	2517733.7280	6893404.5390
98	2518948.0829	6894125.8909
99	2519460.9421	6894218.9790
100	2519477.5231	6894274.4989
101	2518991.4509	6894608.7239
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103	2517946.8821	6896222.1459
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106	2517263.3281	6896774.7829
107	2516678.0940	6895961.3419
108	2516354.2429	6894968.9191
Follow Creek Centerline		
109	2512515.4101	6896798.7691
110	2510070.9550	6895345.0449
111	2510024.3681	6895350.7392
112	2509015.4410	6897053.9060
113	2508879.8501	6897219.8690
114	2508718.2930	6897470.1391
Follow Creek Centerline		

52	2522428.7511	6892115.8841
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54	2522783.9161	6890942.7621
55	2523200.1459	6889672.9999
56	2523291.9161	6889500.2738
57	2523921.1051	6888507.0298
58	2522118.6710	6887405.6878
59	2520266.7928	6886458.2150
Follow County Line		
60	2508923.9081	6886331.4737
Follow County Line		
61	2508923.0819	6886389.0478
62	2505363.5704	6886346.2066
63	2505341.5829	6887205.9681
64	2504421.4269	6888730.5680
65	2504480.8641	6888746.8019
66	2505069.5749	6888754.9298

115	2505471.8339	6897644.3520
116	2503937.3199	6894473.5578
117	2503647.2129	6893979.4791
118	2498910.1699	6887960.1109
119	2498769.1209	6887734.4329
120	2498011.9099	6886265.8380
Follow County Line		
121	2485456.5931	6886126.8941
Follow I-35E Centerline		
122	2484647.7811	6919718.5261
123	2484655.4950	6920045.0090
124	2485123.7250	6920060.6599
125	2485180.0198	6920152.8001
126	2485328.5701	6920236.7501
127	2486026.1310	6920451.3770
128	2487116.2962	6920496.6931
129	2487357.8219	6920522.3640

**LANCASTER CITY COUNCIL**  
Agenda Communication for  
January 23, 2012

**3**

AG12-003

**Consider a resolution approving the terms and conditions of the City owned T-Hangar commercial leases from building 670 at the Lancaster Regional Airport.**

**This request supports the City Council 2011-2012 Policy Agenda.**

**Goal: Sound Infrastructure**

**Background**

The City owns and leases five rows of T-hangars (building 660-700) of three different sizes based off aircraft wingspan. There are 92 units total that the City rents for aircraft storage with end cap commercial spaces on the east end of each hangar row. The City T-hangars are near full occupancy most of the year. This agenda item brings forward commercial and non-commercial leasing agreements.

**Considerations**

- **Operational** - The City T-hangar commercial/non-commercial lease is used for specialty fixed based operators on the airfield and private aircraft owners respectively.
- **Legal** - The lease agreement template was reviewed and approved by the City Attorney.
- **Financial** – Lease rates vary based on size of the hangar. All rates were approved in the City's Master Fee Schedule.
- **Public Information** – There are no public information requirements.

**Options/Alternatives**

1. Council may approve the resolution as presented.
2. Council may reject the resolution.

**Recommendation**

Staff recommends approval of the resolution.

**Attachments**

- Resolution
- Exhibit "A" Tenant List
- Exhibit "B" Lease Agreements

**Prepared and submitted by:**  
Mark Divita, Airport Manager

**Date:** January 9, 2012

**RESOLUTION NO. 2012-01-10**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, APPROVING THE TERMS AND CONDITIONS OF THE CITY OWNED T-HANGAR COMMERCIAL LEASES FROM BUILDING 670 AT LANCASTER REGIONAL AIRPORT; AUTHORIZING THE CITY MANAGER TO EXECUTE SAID LEASES; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, Lancaster Regional Airport has aircraft T-hangers available for monthly rental for revenue gain; and

**WHEREAS**, the City Council of Lancaster, Texas, desires to authorize the hangar lease pursuant to the tenant listed in Exhibit "A";

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

**SECTION 1.** That the City T-hangar lease agreements attached hereto and incorporated herein by reference as Exhibit "B" having been reviewed by the City Council of the City of Lancaster, Texas and found to be acceptable and in the best interest of the City and its citizens, be, and the same is hereby, in all things approved.

**SECTION 2.** That the City Manager is hereby authorized to execute said lease agreement.

**SECTION 3.** This Resolution shall become effective 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 23<sup>rd</sup> day of January 2012.

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Dolle K. Downe, City Secretary

\_\_\_\_\_  
Marcus E. Knight, Mayor

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Robert E. Hager, City Attorney

## Exhibit "A"

<u>Tenant</u>	<u>T-Hangar/Office Space</u>
Paul Gardner (PDG Services, Inc)	670-108 / 670-106
Brett Lummus	670-110



# LANCASTER REGIONAL AIRPORT

## Agreement for Lease of T-Hangar for Storage of Aircraft

### Non-Commercial Tenants

This CONTRACT and AGREEMENT OF LEASE, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between the City of Lancaster, Texas, a municipal corporation, ("LESSOR") and Brett Lummus, (LESSEE"), evidences the following:

I.

LESSOR leases to LESSEE, and LESSEE takes from LESSOR, the following described premises located at the Lancaster Regional Airport ("Airport"), in the City of Lancaster, Dallas County, Texas, for and in consideration of the uses and for the terms and the rental hereinafter set forth, and subject and in accordance with the standard terms and provisions below.

1. **Premises:** Hangar Row and Suite 670 - 110, located at the Airport, and consisting of approximately 1018.25 square feet ("Leased Premises").
2. **Uses:** The leased premises shall be used and occupied only for the storing of aircraft owned, leased, and/or legally operated by LESSEE and related equipment. The leased premises shall be used and occupied only for the personal, business, and/or private use of the LESSEE. Lessee shall provide LESSOR with a copy of the FAA Certificate of Aircraft Registration for the aircraft to be stored under this agreement. If the registration is not in the name of LESSEE, a copy of a valid lease or other documentation showing a possessory interest in the aircraft shall be provided. LESSEE shall not store non-aviation items such as house hold goods in leased premises. LESSEE shall not use the leased premises for any on going business or commercial operations warehousing goods or services for sale to third parties.
3. **Term:** The term of this lease will be from month to month, beginning the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. Either party may cancel and terminate this agreement by serving thirty (30) days written notice of its election to do so.
4. **Rent:** LESSEE shall pay LESSOR as rent \$ 96.00 per month, due and payable in advance on the first day of each month.

- a. All rental payments shall be delivered to LESSOR at the following address:

City of Lancaster  
Finance Department  
P.O. Box 940  
211 N. Henry Street  
Lancaster, TX 75146

b. All payments not received by the 10<sup>th</sup> of each month shall constitute a default and breach of this Lease Agreement as set forth in paragraph 11 herein. All payments not received by the 10<sup>th</sup> of each month shall be considered "past due" for purposes of incurring late charges as calculated in subsection (c) herein, and additional late charges will begin to accrue on the 11<sup>th</sup> day of each month.

c. In the event the payment is received after the 10<sup>th</sup> day of the month, there shall be added a late charge of ten percent (10%) of the amount due.

d. LESSEE'S agreement to make rental payments shall be a covenant independent of all other covenants herein.

e. LESSOR retains the right to review the monthly rental rates and to make adjustments to said rental rates to reflect the then current market rental rates charged for similar facilities.

5. **Utilities:** Utilities are included in LESSEE's rental payment.

## II.

### STANDARD TERMS AND PROVISIONS

1. **Prohibited Uses:** LESSEE shall not use or permit the use of the premises or any part thereof for any purpose or purposes other than those set forth herein. LESSEE shall not commit or cause to be committed any waste in or upon the premises or maintain any public or private nuisance or any other action which may interfere with or disturb the quiet enjoyment of any other tenant of the building or buildings, or permit the use of the premises for any improper or unlawful purposes. Hazardous activities such as, but not limited to: smoking, painting, doping or the other application of hazardous substances are expressly prohibited. Nothing contained in this Section 1 shall, however, prohibit or limit LESSEE's right to use any apparatus, machinery, equipment or devices necessary or useful to LESSEE in the conduct of its activities on or about the premises.

2. **Disabled Aircraft:** LESSEE shall store only the following aircraft on the lease premises under any of the following conditions:

- a. Aircraft in a current airworthy condition according to Federal Aviation Regulations with a current FAA airworthiness certificate and U.S. or foreign registration,
- b. Aircraft with a current FAA airworthiness certificate and registration in a continuing process of overhaul and/or repair showing monthly progress,
- c. Final assembly of amateur built aircraft in preparation to obtain airworthiness certification.

Restoration or construction of an aircraft shall be completed (and an airworthiness certificate issued for amateur built aircraft) within 5 yrs from the beginning of this lease.

Monthly progress is defined as a major component, subcomponent, major system or subsystem is completed or installed on the aircraft every 30 days with appropriate log entries

made.

Upon request from the Airport Manager, LESSEE shall provide monthly evidence of progress. Evidence includes but is not limited to: visual inspection of aircraft, photographs and log entries.

Should LESSEE sell the aircraft, LESSEE shall have ninety (90) days to acquire an aircraft to house upon the leased premises or LESSEE shall relinquish said premises to LESSOR.

Any exception to forgoing requirements must be approved by LESSOR'S Airport Manager.

3. **Compliance with Applicable Laws:** LESSEE shall comply with all applicable laws, ordinances, rules, regulations, and orders of any Federal, State, and City law governing the conduct of LESSEE'S activities on or about the premises.
4. **Alterations.** LESSEE shall make no structural or electrical changes or alterations, or construct any permanent additions or improvements, or do any work in connection therewith, on or about the premises without the prior written consent of the LESSOR'S Airport Manager, whose decision shall be final, and which consent shall not be unreasonably withheld. Any permanent improvements or additions to the leased premises shall be deemed to be fixtures and title to said improvements or additions shall vest in the LESSOR immediately upon completion of construction or attachment.
5. **Entry and Inspection:** LESSOR shall have the right to enter upon and inspect the premises from time to time during the term hereof, to make any repairs deemed necessary by the LESSOR for the safety, improvement, or preservation of the leased premises, without abatement of rent; provided however, that LESSOR shall not, during the course of any such inspection or repairs, unreasonably interfere with the LESSEE'S use and enjoyment of the premises. In lieu of an airport lock/key, LESSEE shall provide a copy of a key or lock combination to airport office.
6. **Services Furnished by LESSOR:** LESSOR shall furnish adequate utility power service for night time lighting. LESSOR assumes no liability to LESSEE for failures or interruptions of any and all services or utilities furnished to LESSEE when due to causes beyond the control of LESSOR, including but not limited to floods, fire, and power failures.
7. **Care of Premises by LESSEE:** LESSEE shall keep the leased premises in a safe, neat, clean, and presentable condition at all times and shall promptly repair any damage caused by LESSEE, its officers, agents, employees, or invitees.
8. **Indemnity and Hold Harmless:** LESSEE agrees to indemnify, defend, and hold LESSOR, its officers, agents, employees, or invitees harmless from and against all claims, demands, causes of actions, suits or judgments (including costs and expenses incurred in connection therewith) for injuries to persons or for loss or damage to property arising out of or in connection with the negligent or intentional

act or omission of LESSEE, its officers, agents, employees, or invitees related to or association with the use and occupancy of the Leased Premises and airport facilities including, but not limited to, claims or damage related to or associated with the storage or maintenance of LESSEE's aircraft upon Airport, or from injury or damage caused to any person's property by reason of the operations of said aircraft. LESSEE further covenants and agrees that LESSEE shall not hold LESSOR or any of its officers, agents, or employees responsible for any loss to LESSEE'S aircraft, automobile, personal property, parts, or supplies that may be located or stored in, on, or about the Leased Premises, where such loss is caused by Natural Disaster fire, rain, windstorm, hail.

9. **Disclaimer:** LESSEE agrees to accept all facilities and the leased premises in the condition in which they are found. LESSOR disclaims and LESSEE accepts LESSOR'S disclaimer of any warranty, express or implied, of the conditions or fitness for the use of the leased premises.

LESSEE further covenants and agrees that LESSEE shall not hold LESSOR or any of its officers, agents, or employees responsible for any loss to LESSEE'S aircraft, automobile, personal property, parts, or supplies that may be located or stored in, on, or about the leased premises, where such loss is caused by Natural Disaster fire, rain, windstorm, hail.

10. **Default:** The following events shall be deemed to be events of default by LESSEE under this Lease Agreement:

a. LESSEE shall fail to pay any installment of rent, and such failure shall continue for a period of ten (10) days following the due date of said installment.

b. LESSEE shall fail to comply with any term, provision or covenant of this Lease Agreement, other than the payment of rent, and shall not cure such failure within twenty (20) days after written notice thereof to LESSEE.

c. LESSEE shall fail to provide lock combination or key to lock on assigned hangar to airport administration.

d. LESSEE shall fail to provide accurate and correct contact information as set forth in paragraph 18 – "Notices".

Upon the occurrence of any event of default specified above, LESSOR shall have the option to pursue any one or more of the following remedies without any notice or demand whatsoever:

a. Terminate this Lease Agreement in which event LESSEE shall immediately surrender the premises to LESSOR; and if LESSEE fails to do so, LESSOR may, without prejudice to any other remedy which it may have for possession or arrearages in rent, enter upon and take possession and expel or remove LESSEE, any other person who may be occupying said premises or any part thereof, and contents therein, including LESSEE'S aircraft, by force if necessary, without being liable for prosecution or any claim of damages therefor; and LESSEE agrees to pay to LESSOR on demand the amount of all loss and damage which LESSOR may suffer by reason of such termination, whether through inability to re-let the premises on satisfactory terms or otherwise.

b. Enter upon and take possession of the premises and expel or remove LESSEE and any other person who may be occupying the premises or any part thereof, by force if necessary, without being liable for prosecution or any claim of damages therefor; and if LESSOR so elects, re-let the premises on such terms as LESSOR shall deem advisable and receive the rent thereof; and LESSEE agrees to pay to LESSOR on demand any deficiency that may arise by reason of such re-letting.

c. Enter upon the premises, by force if necessary, without being liable for prosecution or any claim of damages therefor and do whatever LESSEE is obligated to do under the terms of this Lease Agreement; and LESSEE agrees to reimburse LESSOR on demand for any expenses which LESSOR may incur in thus effecting compliance with LESSEE's obligations under this Lease Agreement; and LESSEE further agrees that LESSOR shall not be liable for any damages resulting to LESSEE from such action.

No reentry or taking possession of the premises by LESSOR shall be construed as an election on its part to terminate this Lease Agreement, unless a written notice of such intention be given to LESSEE. Notwithstanding any such re-letting or reentry or taking possession, LESSOR may at any time thereafter elect to terminate this Lease Agreement for a previous default. Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies herein provided or any other remedies provided by law, nor shall the pursuit of any remedy herein provided constitute a forfeiture or waiver of any rent due to LESSOR hereunder or of any damages accruing to LESSOR by reason of the violation of any of the terms, provisions and covenants herein contained. LESSOR's acceptance of rent following an event of default hereunder shall not be construed as LESSOR's waiver of such event of default. No waiver by LESSOR of any violation or breach of any of the terms, provisions and covenants herein contained shall be deemed or constitute a waiver of any other violation or breach of any of the terms, provisions and covenants herein contained. Forbearance by LESSOR to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of such default. The loss or damage that LESSOR may suffer by reason of termination of this Lease Agreement or the deficiency from any re-letting as provided for above shall include the expense of repossession and any repairs or remodeling undertaken following possession. Should LESSOR at any time terminate this Lease Agreement for any default, in addition to any other remedy LESSOR may have, LESSOR may recover from LESSEE all damages LESSOR may incur by reason of such default, including cost of recovering the premises and reasonable attorney's fees expended by reason of default.

**11. Assignment, Encumbrances, and Subletting:** LESSEE shall not assign, pledge, or otherwise encumber this lease or the premises covered thereby. LESSEE shall not sublet the premises or any part thereof, or furnish to any other person any ground space, office space, aircraft storage space, or other right or privilege in or on any Airport property without the prior written consent of the LESSOR's Airport Manager. Said consent shall not be unreasonably withheld. The rental rate paid by the SUBLESSEE shall not be greater than that paid by LESSEE to LESSOR.

It is understood that consent of the LESSOR to any subletting in one instance shall not constitute consent of the LESSOR to any other subletting. Any assignment, sublease, or other such agreements consented to shall be in writing and shall be approved as to form by LESSOR'S City Attorney.

12. **Surrender of Premises:** Upon termination of this lease by either party, or by reason of default or otherwise, LESSEE shall remove itself, aircraft, and all other personal property, debris and equipment stored by LESSEE in and upon the premises. LESSEE shall, at its own expense, repair any damage caused by LESSEE'S use. LESSEE shall, upon termination of this lease, surrender the premises to LESSOR in the same condition as received, ordinary wear and tear excepted. LESSOR will charge a reasonable fee for cleaning and/or disposal of any items left behind upon the premises.

13. **Rules and Regulations:** LESSEE shall faithfully observe and comply with all rules and regulations of LESSOR, including any rules and regulations promulgated by LESSOR'S Airport Manager, not inconsistent with the provisions of this lease. Such rules and regulations shall be communicated by LESSOR'S Airport Manager, in writing, to LESSEE and necessary for the reputation, safety, care, or appearance of the building, or preservation of good order, the operation or maintenance of equipment, or the comfort or safety of other Airport tenants.

14. **Successors and Assigns:** The terms, covenants, agreements, and conditions contained herein shall be binding upon LESSEE'S heirs, successors, executors, administrators, and assignees. This provision shall not in any way affect the requirements set forth in section II, paragraph 9.

15. **Signs:** LESSEE shall not erect, install, or place any signs on or about the leased premises without the prior written consent and approval of the LESSOR'S Airport Manager.

16. **Ingress and Egress:** LESSEE, its invitees, visitors, and suppliers of materials and services shall have full and free rights of ingress and egress to and from the premises and to and from other Airport buildings subject to rules and regulations of LESSOR and LESSOR'S Airport Manager.

17. **Chemicals and other Toxic Substances:** No chemicals or other toxic substances shall be stored unless in compliance with adopted Lancaster Regional Airport rules and regulations, as amended, which are incorporated herein as is set forth in full and on file with the City Manager or his/her designee.

18. **Notices:** All legal notices given or required in connection with this lease shall be in writing and shall be sent via Mail or E-Mail to the following persons(s):

LESSOR: City of Lancaster  
Lancaster Regional Airport  
P.O. Box 940  
211 N. Henry Street  
Lancaster, TX 75146

LESSEE: Name: Brett Lummus  
Address 1: 2146 Bluebell  
Address 2: Forney, TX 75126

Phone: 214-354-8301

E-Mail: lummus45@yahoo.com

19. **Insurance:** LESSEE shall, at its own option, carry its own insurance on its aircraft and other equipment which LESSEE stores in or on the leased premises.

20. **Waiver of Attorney Fees:** LESSOR and LESSEE covenant and agree that in the event of any litigation arising between the parties to this lease, LESSEE shall be solely responsible for payment of its attorney's fees. In no event shall LESSOR be responsible for LESSEE'S attorney's fees regardless of the outcome of the litigation.

21. **Entire Agreement:** This agreement constitutes the entire understanding between the parties, and, as of its effective date, supersedes all prior or independent agreements covering the LESSEE'S occupation of the leased premises. Any change or modification hereof shall be in writing, signed by both parties. The parties to this agreement hereby agree and acknowledge that they are the principals to the agreement and have the power, right, and authority to enter into this agreement and are not acting on behalf, or as an agent, of any third party.

22. **Severability:** If any provision of this agreement shall be finally declared void or illegal by a court having competent jurisdiction, the entire agreement shall not be void, but the remaining provisions shall continue in effect as nearly as possible in accordance with the original intent of the parties. Venue governed by Texas law except where exempted by Federal law and Rules and Regulations.

23. **Governing Law; Venue:** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Venue for any disputes arising from or related to the performance of this Agreement shall be in a state district court in Dallas County, Texas.

24. **Captions:** The Captions to the various clauses of this agreement are for informational purposes only and in no way alter the substance of the terms and conditions of this agreement.

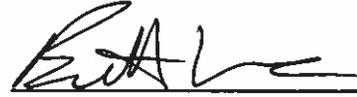
25. **Landlord's Lien:** Pursuant to Section 54.021 of the Texas Property Code, LESSOR has a preference lien on the property of the LESSEE or any SUBLESSEE in the building for rent that is due and for rent that is to become due during the current 12 month period succeeding the date of the beginning of the rental agreement or an anniversary of that date.

**IN WITNESS HEREOF**, the parties executed this lease as of the day and year first above written.

CITY OF LANCASTER, LESSOR

LESSEE:

By: \_\_\_\_\_  
Opal Mauldin Robertson,  
City Manager

  
\_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Dolle K. Downe, City Secretary

# LANCASTER REGIONAL AIRPORT



## Agreement for Lease of T-Hangar for Storage of Aircraft

Non-Commercial Tenants

### Tenant Fact Sheet PRIVATE INFORMATION

T-Hangar Tenant Name:

Lumms Brett Hangar Number(s): 670 - 110  
Last First

Date: <sup>BL</sup> 01/10/12

Combination Lock No. or Key No.: N/A

Aircraft Registration Number: N8313W

Make: Piper Model: PA-28-180 Number of Engines: 1

Address: 2146 Bluebell Forney TX 75126

Phone Numbers:

(214) 354-8301 (Cell)  
(    )      (Home)  
(972) 227-0398 (Work/Business)

Phillip Keaton  
cell - 469-363-0882

Email: Lumms45@yahoo.com

Contact info is for tenant announcements and hangar access under normal conditions.

I acknowledge the Lancaster Airport Rules & Regulations and Minimum Standards are available for view in the terminal building and understand that they are provided on the airport web site ([www.lancasterregionalairport.com](http://www.lancasterregionalairport.com)) for my review.

BL

Initials

Emergency contact & phone number for closest relative or responsible party not living with you:

Steve Ward 214 536 7333



STATE OF TEXAS           §  
  §                                   LEASE AGREEMENT  
COUNTY OF DALLAS     §

This Lease is entered into between the City of Lancaster, Texas ("Landlord") and PDG Services ("Tenant").

In consideration of the mutual covenants and agreements of this Lease, and other good and valuable consideration, Landlord demises and leases to Tenant, and Tenant leases from Landlord, 670-106 & 670-108, Lancaster, Dallas County, Texas, depicted in Exhibit "A" & "B", attached hereto (the "Premises"). The Premises are referred to in this Lease as the "Premises" or the "Leased Premises." The building is referred to as the "Building."

**I. TERM OF LEASE**

1.01 **Term:** Term of this Lease is two (2) years, beginning on the \_\_\_\_\_ day of \_\_\_\_\_, 2012, and ending on the last day of \_\_\_\_\_, 2014, as provided in this Lease ("Lease Term").

1.02 **Renewal:** After the initial term, this Lease may be renewed on an annual basis subject to all the terms and conditions set forth herein.

1.03 **Termination:** Landlord or tenant may, without cause, terminate this Lease during the Lease Term or any extension thereof upon ninety (90) days prior written notice thereof.

1.04 **Holdover:** If Tenant holds over and continues in possession of the Premises after the Lease Term (or any extension of it) expires, Tenant will be considered to be occupying the Premises at will, subject to all of the terms of this Lease.

**II. RENT**

**Basic Rent:** Tenant will pay Landlord **\$298.00 per month**, from the beginning of the Lease Term and throughout the Lease Term. The monthly rent due throughout the Lease Term shall be paid in advance of the tenth (10<sup>th</sup>) day of each month.

**III. USE OF PREMISES**

3.01 **Permitted Use(s):** Tenant will use the Premises only for aviation business related purpose, to wit: Avionics Repair and Installation. No other services are permitted unless Landlord gives Tenant prior written consent for additional permitted uses.

3.02 **Insurance Hazards:** Tenant shall during the term hereof, at its sole expense, maintain in full force and effect the following insurance: (1) Commercial general aviation liability policy with coverage: \$500,000 Combined Single Limit (CSL) for premises if customers are allowed on premises; (2) Hangar Keeper's Liability – Value of Aircraft in care up to

\$500,000 custody and control. All insurance and certificate(s) of insurance shall contain the following provisions: (1) name the Landlord, its officers, agents and employees as additional insureds as to all applicable coverage and (2) provide for at least thirty (30) days prior written notice to the Landlord for cancellation, non-renewal, or material change of the insurance.. All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service. A certificate of insurance evidencing the required insurance shall be on file for review upon request from LESSOR.

LESSEE shall, at its own option, carry its own insurance on its aircraft and other equipment which LESSEE stores in or on the leased premises and in no event shall LESSOR be liable to LESSEE for loss or damage to LESSEE'S aircraft and equipment or personal property of LESSEE.

### 3.03 **Compliance with Laws:**

(a) Tenant may not use, or permit using, the Premises in any manner that results in waste of premises or constitutes a nuisance or for any illegal purpose. Tenant, at its own expense, will comply, and will cause its officers, employees, agents and invitees to comply, with all applicable laws, ordinances, and governmental rules and regulations concerning the use of the Premises, including Hazardous Materials Laws.

(b) "Hazardous Materials" means any substance, material, or waste that is or becomes regulated by any local governmental agency, the State of Texas, or the Federal Government, including, but not limited to, any material or substance that is (1) *designated as a "hazardous substance" pursuant to § 311 of the Clean Water Act, 33 U.S.C. § 1251 et. seq., or listed pursuant to § 307 of the Clean Water Act, 33 U.S.C. § 1317,* (2) *defined as a "hazardous substance" pursuant to § 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et. seq.,* (3) *defined as a "hazardous waste" pursuant to § 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et. seq.,* (4) *petroleum,* (5) *asbestos,* and (6) *polychlorinated biphenyls.*

3.04 **Condition of Premises, Tenant Finish-Out:** Tenant acknowledges and agrees and does hereby accept the Premises AS IS with all faults. Tenant shall, without cost to Landlord, be responsible for the design and construction of all Tenant finish out for the Premises including exterior improvements.

## IV. MAINTENANCE AND SURRENDER

**Maintenance and Surrender by Tenant:** Tenant will maintain the leased Premises and keep them free from waste or nuisance throughout the Lease Term and any extensions of it. The Tenant shall be responsible for routine maintenance of all tenant maintainable consumables for electrical, plumbing, and heating / air conditioning elements of the building on the Premises. When this Lease terminates, Tenant must deliver the Premises in as good a state of repair and condition as they existed when Landlord delivered possession to Tenant, except for reasonable wear and tear commensurate with the age of the Premises and damage by fire, tornado, or other casualty. If Tenant neglects to reasonably maintain the Premises, Landlord may, but is not

required to, cause repairs or corrections to be made. Any reasonable costs incurred for repairs or corrections for which Tenant is responsible under this section are payable by Tenant to Landlord as a reimbursement within thirty (30) days after Lease termination.

## V. UTILITIES AND TAXES

**Utilities and Taxes on Tenant's Property:** Landlord shall pay or cause to be paid all charges for water. Tenant will pay all taxes levied or assessed against personal property, furniture, or fixtures it places in or on the Premises. If any such taxes for which Tenant is liable are levied or assessed against Landlord or Landlord's property, and Landlord elects to pay them, or if the assessed value of Landlord's property is increased by including personal property, furniture, or fixtures placed by Tenant in the Premises, and Landlord elects to pay the taxes based on the increase, Tenant must, upon demand, pay Landlord the part of the taxes for which Tenant is primarily liable under this article.

## VI. ALTERATIONS, ADDITIONS, IMPROVEMENTS AND FIXTURES

6.01 **Consent of Landlord:** Tenant may not make any alterations, additions, or improvements to the Premises without Landlord's prior written consent, which shall not be unreasonably denied or delayed.

6.02 **Property of Landlord:** All alterations, additions, or improvements made by Tenant will become Landlord's property when this Lease terminates.

6.03 **Trade Fixtures:** Tenant has the right at all times to erect or install furniture and fixtures, as long as Tenant complies with all applicable governmental laws, ordinances, and regulations. Tenant may remove such items when this Lease terminates, if Tenant is not in default at that time and the fixtures can be removed without structural damage to the Premises. Before this Lease terminates, Tenant must repair any damage caused by removing any fixtures and should have 15 days to comply. Any furniture or fixtures not removed by Tenant when this Lease terminates are considered abandoned by Tenant and automatically become Landlord's property.

6.04 **Construction by Tenant:** Tenant shall have the right during the term of this Lease to erect, maintain, alter, remodel, reconstruct, or rebuild the tenant improvements within the Premises, subject to the following general conditions:

1. Tenant bears cost of any such work;
2. The Premises shall at all be times kept free of mechanics' and material men's liens;
3. Any improvements constructed on the Premises shall be approved by Landlord pursuant to § 6.05 herein and if remaining at the end of the Lease Term, shall become the property of Landlord; and
4. Any removal of tenant improvements must be pre-approved by Landlord.

6.05 **Landlord's Approval:** The following rules govern Landlord's approval of construction, additions, and alterations of the building or other improvements:

(a) **Written approval required.** No tenant or other improvement may be constructed unless the plans, specifications, and proposed location of the improvement have received Landlord's written approval. No material addition to or alterations of the Premises may be begun until plans and specifications covering the proposed addition or alteration have been first submitted to and approved by Landlord. The Landlord shall not unreasonably withhold approval of such plans and specifications.

(b) **Landlord's approval.** Landlord will promptly review and approve all plans submitted under subparagraph above or note in writing any required changes or corrections that must be made to the plans. Failure to object to the plans within thirty (30) days constitutes its approval of the changes. Any required changes or corrections must be made, and the plans resubmitted to Landlord, within thirty (30) days after the corrections or changes have been noted. Landlord's failure to object to the resubmitted plans and specifications within thirty (30) days constitutes its approval of the changes. Minor changes in work or materials not affecting the general character of the Premises project may be made at any time without Landlord's approval, but a copy of the altered plans and specifications must be furnished to Landlord.

## VII. DAMAGE OR DESTRUCTION

7.01 **Notice to Landlord:** If the Premises or any structures or improvements are damaged or destroyed by fire, tornado, or other casualty, Tenant must immediately give Landlord written notice of the damage or destruction, including a general description of the damage and, as far as known to Tenant, the cause of the damage.

7.02 **Total Destruction:** If the Premises are totally destroyed by fire, tornado, or other casualty this Lease will terminate, and rent will be abated for the unexpired portion of this Lease, effective as of the date of written notification as provided in § 7.01. The Landlord in its sole discretion may elect to restore the Premises and rebuild the Building in which event the Lease shall continue in under the same terms and conditions set forth herein from the date the Premises has been fully restored. Alternatively, the Tenant with the consent of Landlord may, by written notice within thirty (30) days after the notice as provided in § 7.01, elect to rebuild the Building and restore the Premises provided Tenant commences the restoration of the Premises within one hundred eighty (180) days thereafter and at Tenant's cost.

7.03 **Partial Destruction:** If the Premises are damaged by fire, tornado, or other casualty other than by the negligence, gross negligence, or intentional tort of Tenant or any person in or about the Premises with Tenant's express or implied consent, or if they are so damaged that rebuilding or repairs cannot reasonably be completed within one hundred eighty (180) working days or the damage exceeds the Landlord's insurance recovery, or the Landlord elects not to restore the Premises, this Lease will terminate.

## VIII. CONDEMNATION

8.01 **Total Condemnation:** If, during the Lease Term or any extension or renewal of the Lease, all of the Premises are taken for any public or quasi-public use under any

governmental law, ordinance, or regulation, or by right of eminent domain, or are sold to the condemning authority under threat of condemnation, this Lease will terminate, and the rent will be abated during the unexpired portion of this Lease, effective as of the date the condemning authority takes the Premises.

8.02 **Partial Condemnation:** If less than all of the Premises is taken for any public or quasi-public use under any governmental law, ordinance, or regulation or by right of eminent domain, or is sold to the condemning authority under threat of condemnation, either party may terminate this Lease by giving written notice to the other within thirty (30) days. In addition, if all or a portion of the parking area, or the signage, of the Premises is taken for any public or quasi-public use under any governmental law, ordinance, or regulation or by right of eminent domain, or is sold to the condemning authority under threat of condemnation, either party may terminate this Lease by giving Landlord written notice within thirty (30) days. If the Premises are partially condemned and neither party elects to terminate this Lease, this Lease will not terminate, but the rent will be adjusted equitably during the un-expired portion of this lease.

8.03 **Condemnation Award:** Landlord is entitled to receive and retain the entire award in any condemnation proceedings, except for any portion attributable to trade fixtures and personal property owned by Tenant, which Tenant is entitled to receive and retain. The termination of this Lease will not affect the right to this award.

## IX. INSPECTION BY LANDLORD

Landlord and its officers, agents, employees, and representatives may enter any part of the Premises during normal business hours for the purpose of inspection, cleaning, maintenance, repairs, alterations, or additions as Landlord considers necessary (but without any obligation to perform any of these functions except as stated in this Lease). Tenant is not entitled to any abatement or reduction of rent by reason of entry of Landlord or any of its officers, agents, representatives, or employees under this article, nor will such an entry be considered an actual or constructive eviction.

## X. MECHANIC'S LIEN

Tenant will not permit any mechanic's lien to be placed on the Premises or on improvements made to the Premises. If a mechanic's lien is filed on the Premises or on improvements on them, Tenant will promptly pay it. If default in payment of the lien continues for thirty (30) days after Landlord's written notice to Tenant, Landlord may, at its option, pay the lien or any portion of it without inquiring into its validity. Any amounts Landlord pays to remove a mechanic's lien caused by Tenant to be filed against the Premises or against improvements on the Premises, including expenses and interest, are due from Tenant to Landlord and must be repaid to Landlord immediately on rendition of notice, together with annual interest at the highest rate then allowed by law until paid.

## XI. INDEMNITY

11.01 **Tenant's General Indemnity:** Tenant will indemnify and hold Landlord

harmless against any claims, demands," damages, costs, and expenses, including reasonable attorney's fees, for defending claims and demands arising from the conduct or management of Tenant's business on the Premises or its use of the Premises, or from any breach on Tenant's part of any conditions of this Lease, or from any act or negligence of Tenant, its officers, agents, contractors, employees, subtenants, or invitees in or about the Premises. In case of any action or proceeding brought against Landlord by reason of any such claim, Tenant, on notice from Landlord, will defend the action or proceeding by counsel acceptable to Landlord.

**11.02 Tenant's Environmental Indemnity:**

(a) Tenant is responsible only for the payment of that portion of any cleanup costs for the Premises necessary for compliance with Hazardous Materials Laws that arise as a result of Tenant's discharge of Hazardous Materials on the Premises during Tenant's occupancy of the Premises. Landlord is responsible for all other cleanup costs and for ensuring that any other responsible party participates in the cleanup to the extent of its responsibility for a release.

(b) Tenant must indemnify, defend, and hold harmless Landlord from and against all claims, liabilities, losses, damages, and costs, foreseen or unforeseen, including without limitation counsel, engineering, and other professional or expert fees, that Landlord may incur by reason of Tenant's action or inaction with regard to Tenant's obligations under this section.

**XII. ASSIGNMENT AND SUBLEASE**

**Assignment and Subletting by Tenant:** Tenant may not assign this Lease, or any interest in it, nor sublet the Premises, or any part of them without prior written consent of Landlord.

**XIII. DEFAULT**

**13.01 Tenant's Default:** The following events are considered events of default by Tenant under this Lease:

(a) Tenant fails to pay any installment of rent due under this Lease, whether base rent or additional rent, or any other amounts owing by Tenant to Landlord, and the failure continues for thirty (30) days after receipt of written thereof.

(b) Tenant fails to comply with any term or covenant of this Lease, other than the payment of rent or any other sum of money owing by Tenant to Landlord, and does not cure the failure within sixty (60) days after written notice of the failure to Tenant; provided that if such failure cannot be cured within sixty (60) days Tenant shall not be in default if Tenant is proceeding to cure the failure and cures such failure within thirty (30) days thereafter.

(c) Tenant makes an assignment for the benefit of creditors.

(d) Tenant deserts or vacates any substantial portion of the Premises for sixty (60) or more consecutive days.

13.02 **Landlord's Remedies:** In the event of any default specified in §13.01, Landlord may pursue one or more of the following remedies:

(a) Landlord may terminate this Lease, in which event Tenant must immediately surrender the Premises to Landlord. If Tenant fails to do so, Landlord may, without prejudice - to any other remedy that it may have for possession or arrearages in rent, enter on and take possession and expel or remove Tenant and any other person occupying the Premises or any part of them, by any lawful means, without being liable for prosecution or any claim of damages for the entrance and expulsion or removal. Tenant will, on demand, pay Landlord the amount of all loss and damage that Landlord suffers by reason of the termination, whether through inability to re-let the Premises on satisfactory terms, if Landlord elects to re-let, or otherwise.

(b) Landlord may enter on and take possession of the Premises and expel or remove Tenant and any other person occupying the Premises or any part of them, by any lawful means, without being liable for prosecution or any claim for damages for the entrance and expulsion or removal; re-let the Premises on the terms Landlord considers advisable; and receive the rent for the re-letting. Tenant will, on demand, pay Landlord any deficiency that may arise by reason of re-letting.

(c) Landlord may enter the Premises, by any lawful means (and Landlord is expressly reserving and retaining the right to so re-enter the Premises), without being liable for prosecution or any claim for damages for the entry, and do whatever Tenant is obligated to do under the terms of this Lease to correct the default. Tenant will, on demand, reimburse Landlord for any expenses that Landlord incurs in effecting compliance with Tenant's obligations under this Lease in this manner, and Tenant further releases Landlord from liability for any damages resulting to Tenant from such an action.

13.03 **Cumulative Remedies:** Landlord's or Tenant's pursuing any remedy provided in this Lease will not preclude pursuing any other remedy provided in this Lease. Either party's pursuing any remedy provided in this lease or by law will not constitute a forfeiture or waiver of any damages accruing to either party by reason of violating any term or covenant of this Lease. Nor will Landlord's pursuing any remedies provided in this Lease constitute a waiver or forfeiture of any rent due under this Lease.

13.04 **Waiver of Default:** Either party's waiving any default or violation or breach of any term or covenant of this Lease does not waive any other violation or breach of any term or covenant of this Lease. Nor does either party's forbearing to enforce one or more of the remedies provided in this Lease or by law on a default waive the default. Landlord's accepting rent following default under this Lease does not waive the default.

13.05 **Surrender of Premises:** No act done by Landlord or its agents during the Lease Term may be considered an acceptance of a surrender of premises is valid unless in writing and subscribed by Landlord.

#### XIV. MISCELLANEOUS

14.01 **Notices and Addresses:** All notices required under this Lease may be given by the following methods:

(a) By certified mail, return receipt requested, addressed to the proper party, at the following addresses:

**If to Landlord:**

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

**If to Tenant:**

PDG Services  
Attn: Paul Gardner  
PO Box 273  
Palmer, Texas 75152

E-mail address: paul@pdgservices.com

Notices are effective when received. Either party may change the address to which notices are to be sent by sending written notice of the new address or number to the other party in accordance with the terms of this section.

14.02 **Parties Bound:** This agreement binds, and inures to the benefit of, the parties to this Lease and their respective heirs, executors, administrators, legal representatives, successors, and assigns when this agreement permits.

14.03 **Texas Law to Apply:** This agreement is to be construed under Texas law, and all obligations of the parties created by this agreement are performable in Dallas County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said Court.

14.04 **Legal Construction:** If anyone or more of the provisions in this agreement are for any reason held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability will not affect any other provision of the agreement, which will be construed as if it had not included the invalid, illegal, or unenforceable provision.

14.05 **Prior Agreements Superseded:** This agreement constitutes the parties sole agreement and supersedes any prior understandings or written or oral agreements between the parties with respect to the subject matter.

14.06 **Amendment:** No amendment, modification, or alteration of the terms of this

agreement is binding unless in writing, dated subsequent to the date of this agreement, and duly executed by the parties.

14.07 **Rights and Remedies Cumulative:** The rights and remedies provided by this Lease are cumulative, and either party's using any right or remedy will not preclude or waive its right to use any other remedy. These rights and remedies are in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

14.08 **Attorney's Fees and Costs:** If, as a result of either party's breaching this agreement, the other party employs an attorney to enforce its rights under this Lease, the breaching or defaulting party will pay the other party the reasonable attorney's fees and costs incurred to enforce this Lease.

14.09 **Force Majeure:** Neither Landlord nor Tenant is required to perform any term or covenant of this Lease so long as performance is delayed or prevented *by force majeure*, which includes acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, civil riot, floods, and any other cause not reasonably within Landlord's or Tenant's control and that Landlord or Tenant, by exercising due diligence and paying money, cannot prevent or overcome in whole or part.

The undersigned Landlord and Tenant execute this agreement on the \_\_\_\_ day of \_\_\_\_\_, 2012

**Landlord:**

By: \_\_\_\_\_  
Opal Robertson, City Manager

**Tenant:**

By: Paul Gardner  
Name: PAUL GARDNER  
Title: OWNER / OPERATOR

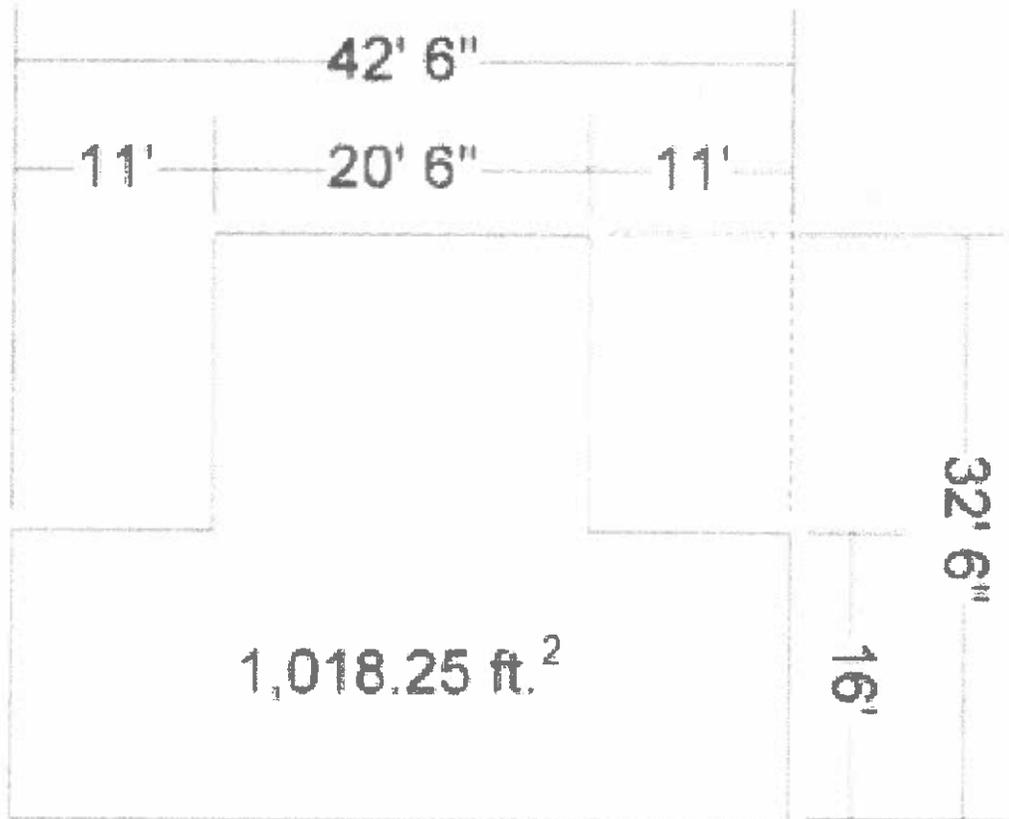
ATTEST:

\_\_\_\_\_  
Dolle Downe, City Secretary

**Exhibit "A"**

**T-Hangar 670-108**

**T-Hangar Rent: \$96**  
**(Adjusted for no walls with adjacent tenants)**



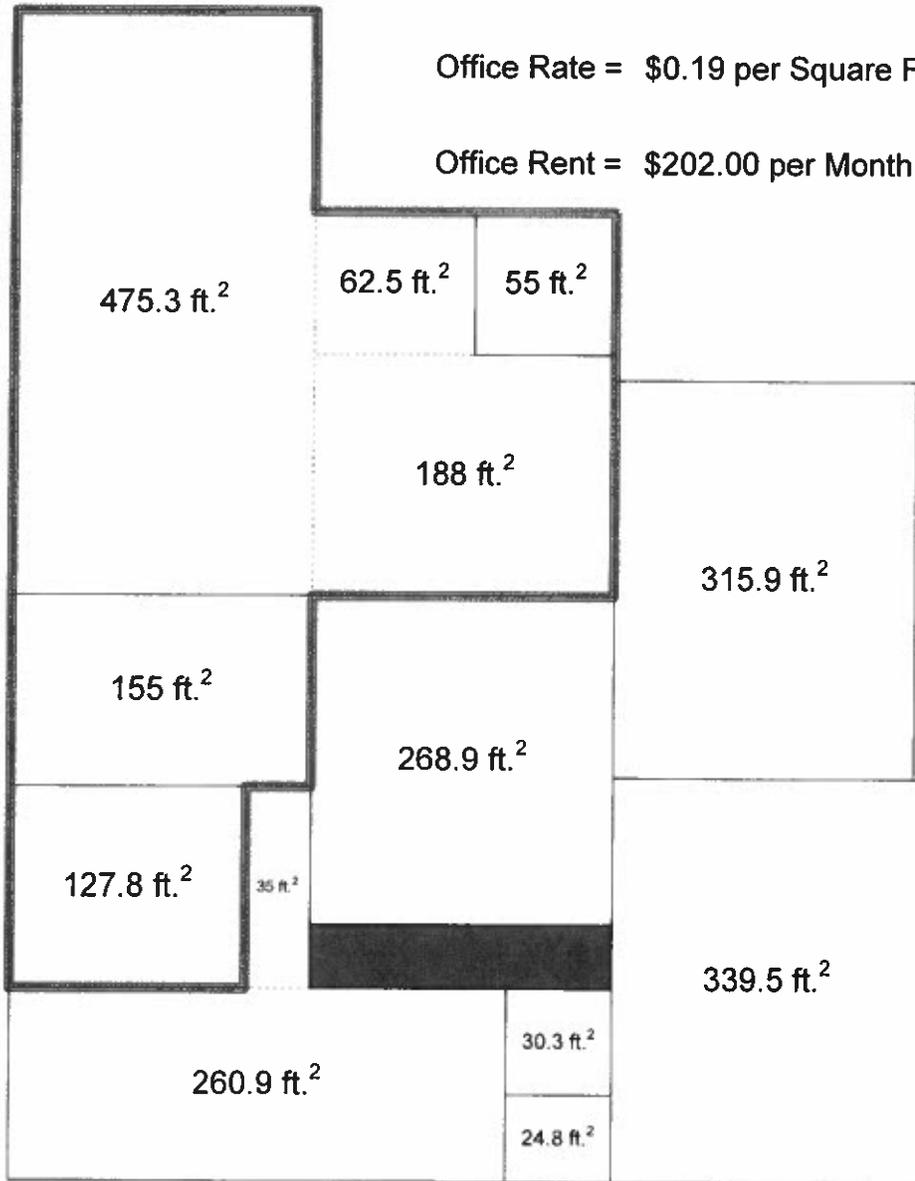
**Exhibit "B"**

**Office space 670-106**

Total Square Feet = 1,063.6 ft.<sup>2</sup>

Office Rate = \$0.19 per Square Foot

Office Rent = \$202.00 per Month



**LANCASTER CITY COUNCIL**  
Agenda Communication for  
January 23, 2012

**4**

AG12-004

**Conduct a Public Hearing and consider an ordinance amending the Lancaster Development Code, by amending Article 14.400, Section 14.401, "Land Use Schedule," by amending the Land Use Table; by amending Article 14.400, Section 14.402, "Use Standards," Subsection (b)(3) Bed and Breakfast Operation, providing new locations for bed and breakfast operations to be allowed; by amending Article 14.500, Section 14.505 "Industrial Districts," removing requirements for masonry material on exterior walls for existing structures.**

**This request supports the City Council 2011-2012 Policy Agenda.**

**Goal: Quality Development**

**Background**

Periodically, the Lancaster Development Code (LDC) is reviewed by Staff to ensure that the regulations contained within are current and appropriate. Sections are reviewed to address the requirements placed upon land uses, the definitions of uses, the location uses are allowed, and other language and information contained in the LDC. These reviews lead to amendments being made to update and change the LDC to more appropriately reflect the best possible environment for Lancaster's citizens, property owners and the development community.

Staff has reviewed the appropriateness of Specific Use Permit (SUP) designations for multiple uses, the allowance of uses in certain areas and the requirements placed on uses in multiple zoning districts. From this review, it was determined that several amendments should be proposed to minimize the encumbrances placed on the development community when bringing forward new construction, development, and/or business to the city.

**Considerations**

Following are the proposed changes to the Lancaster Development Code:

**AMENDMENT – Article 14.400 Permissible Uses**  
**Section 14.401 Land Use Tables**

In reviewing the Land Use Tables, Staff found seven (7) uses that required an SUP designation that would be more feasible to allow them by right. These land uses primarily required an SUP in the Neighborhood Services zoning district while being allowed by right in other zoning districts. Because of their size, potential hours of operations, and nature of their business, Staff concluded that an SUP would not be necessary for these land uses. The rationale for an SUP is typically to safeguard an area from potential harmful effects caused by one use upon another. The seven land uses that are being proposed to be allowed by right and the zoning district the change is being proposed for is as follows (black is existing; red is proposed):

**Subsection 2.1.6 Retail & Personal Services**

Land Use	NS	R	CH	CS	ORT	LI	MI
Antique/Collectible Store	S P	P	P	P			
Catering Service	S P	P	P	P	S P	P	
Christmas Tree Sales Lot & Similar Uses, Temporary+	S P	P	P	P	S P	P	P
Museum or Art Gallery (private)	S P	P		P	P	P	
Retail store with more than 2 fuel dispensers		S P	P	P		P	P

**Subsection 2.1.7 Commercial & Business Services**

Land Use	NS	R	CH	CS	ORT	LI	MI
Electrical, Watch, Clock, Jewelry & Similar Repair	S P	P	P	P		P	P

**Subsection 2.1.8 Auto & Marine-Related**

Land Use	NS	R	CH	CS	ORT	LI	MI
Car Wash/Auto Detail+	S	S P	S P	P		P	P

**AMENDMENT – Article 14.400 Permissible Uses**  
**Section 14.402 b(3) Bed and Breakfast Operation**

In reviewing the areas that a Bed and Breakfast is allowed, Staff noticed that they are not allowed within the Historic Town Square. By adding this land use to the Town Square, it could potentially increase the awareness of the city's Historic District as well as stimulate additional interest in the Town Square by creating another type of tourist attraction. A Bed and Breakfast would be allowed only where residential units are currently allowed and not on the first floor which would remain for retail shops, offices, and restaurants. Staff proposes the LDC be amended by adding the language of where Bed and Breakfast operations are allowed to be located in this section as follows:

(3) Bed and Breakfast Operation

A. A "bed and breakfast" must be located on an owner-occupied single family lot, or on an immediately adjacent lot, **or in the Historic Town Square in the Downtown District where residential units are allowed.**

**AMENDMENT – Article 14.500 District Development Regulations and Standards**  
**Section 14.505 Industrial Districts**

Land zoned for Industrial uses is typically occupied by manufacturing and warehouse buildings in areas either concentrated in locations out of general travel patterns or on the periphery of the city. The LDC requires land uses in these areas to be screened with trees and shrubs from the public rights-of-way. This screening criterion usually obstructs most, if not all, of the view of the building from the street. Many of the structures use building materials that are primarily metal or tilt wall, which are not complementary materials for masonry. Given these factors, the requirement of a masonry front façade is obsessive when placed in context with the built environment and nature of these areas. Therefore, Staff proposes the removal of the requirement for existing buildings in Industrial zoned areas to have masonry façades on walls which are visible from a public street or open space. Staff proposes the LDC to be amended as follows:

(a) **General Industrial District Standards.**

- (1) **Construction Materials.** Exterior Walls for New Construction Only - **Each exterior wall shall consist of 100% masonry materials as defined in Article 14.1300 Definitions - Masonry, excluding doors and windows, on walls which are visible from a public street or open space, including a minimum of 20% stone.**

All buildings shall have exterior walls constructed of stone, brick, glass block, tile, cast metal, cast or cultured stone, or a combination of those materials. The use of other cementaceous products (e.g. stucco, Hardy Plank, or other similar materials approved by the Building Official) shall be limited to 50% of the buildings exterior finishes where it is deemed important as a design feature and where it will be applied under the highest standards for quality and durability. However, stucco may not be located in the first 8 feet above grade on a façade visible from a street or public area.

Exceptions to this requirement, including allowing concrete tilt-up walls, may be permitted on a case by case basis by the Planning and Zoning Commission or City Council upon submission and approval of elevation drawings of the subject structure, and material samples.

- **Legal** – The City Attorney has drafted an ordinance for the amendments.
- **Financial** - There are no financial considerations for the amendments.

- **Public Information** - On Friday, December 30, 2011 a Public Hearing notice appeared in the Focus Daily News, the City's newspaper of record. The Lancaster Development Code (LDC) requires two public hearings and legal notification in the City's newspaper of record to approve a text amendment. This is the second of the two public hearings; the first being at the Planning and Zoning Commission meeting on January 10, 2012.

### **Options/Alternatives**

1. City Council may accept the recommendation of the Planning and Zoning Commission and adopt an ordinance with staff recommendations as presented.
2. City Council may modify the ordinance and state the modification(s) for inclusion in the ordinance.
3. City Council may deny the ordinance. Denial of the ordinance will leave the Lancaster Development Code unchanged.

### **Recommendation**

#### **P&Z**

At the January 10, 2012 regular meeting, the Planning and Zoning Commission (P&Z) recommended unanimously to approve the proposed amendments to the requirements for certain uses to have Specific Use Permits and the proposed inclusion of the Bed and Breakfast Use in the Historic District. In a separate action, the P&Z recommended approval of the proposal to remove certain masonry requirements on existing buildings in the "light industrially zoned" areas by a vote of 3-1, with Chair Coulton dissenting, with the stipulation that masonry requirements are not required on existing buildings within the Light Industrial Districts only.

#### **Staff**

Staff recommends **approval** of the text amendments and ordinance in accordance with P&Z stipulations.

### **Attachments**

- Ordinance
- Planning and Zoning Commission agenda communication w/attachments
- Unapproved Planning and Zoning Commission meeting minutes - Draft

**Prepared and submitted by:**  
Nathaniel Barnett, Senior Planner

**Date:** January 11, 2012

ORDINANCE NO. \_\_\_\_

**AN ORDINANCE OF THE CITY OF LANCASTER, TEXAS, AMENDING THE LANCASTER DEVELOPMENT CODE, BY AMENDING ARTICLE 14.400, SECTION 14.401, "LAND USE SCHEDULE," BY AMENDING THE LAND USE TABLE AS PROVIDED IN EXHIBIT "A," ATTACHED HERETO AND INCORPORATED HEREIN; BY AMENDING ARTICLE 14.400, SECTION 14.402, "USE STANDARDS," SUBSECTION (B)(3) BED AND BREAKFAST OPERATION, PROVIDING NEW LOCATIONS FOR BED AND BREAKFAST OPERATIONS TO BE ALLOWED; BY AMENDING ARTICLE 14.500, SECTION 14.505 "INDUSTRIAL DISTRICTS," REMOVING REQUIREMENTS FOR MASONRY MATERIAL ON EXTERIOR WALLS FOR EXISTING STRUCTURES; PROVIDING FOR A REPEAL OF REGULATIONS IN CONFLICT; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000.00) FOR EACH OFFENSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, the City Planning and Zoning Commission and the governing body of the City of Lancaster, Texas, in compliance with the laws of the State of Texas and pursuant to the Lancaster Development Code of the City of Lancaster, have given the requisite notices by publication and otherwise, and after holding due hearings and affording a full and fair hearing to all property owners generally, and to all persons interested and situated in the affected area and in the vicinity thereof, the said governing body is of the opinion that Ordinance 2006-04-13, the Lancaster Development Code, as previously amended, should be further amended as provided herein.

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

**SECTION 1.** That the Lancaster Development Code be, and the same is, hereby amended by amending Article 14.400, Section 14.401, "Land Use Schedule," by amending the Land Use Table as provided in Exhibit "A," attached hereto and incorporated herein.

**SECTION 2.** That the Lancaster Development Code be, and the same is, hereby amended by amending Article 14.400, Section 14.402, "Use Standards," by amending Subsection (b) (3) Bed and Breakfast Operation to add a provision for locations bed and breakfast operations shall be allowed, which shall read as follows:

**“Article 14.400 Permissible Uses**

.....

**Sec. 14.402                    Use Standards**

.....

(b) Residential and Lodging Use Conditions:

(3) Bed and Breakfast Operation

.....

A. A “bed and breakfast” must be located on an owner-occupied single family lot, or on an immediately adjacent lot, or in the Historic Town Square in the Downtown District where residential units are allowed.

.....”

**SECTION 3.** That the Lancaster Development Code be, and the same is, hereby amended by amending Article 14.500, Section 14.505, “Industrial Districts,” to remove language requiring masonry materials on exterior walls, which shall read as follows:

**“Article 14.500 District Development Regulations and Standards**

**Sec. 14.505    Industrial Districts**

.....

(a) **General Industrial District Standards.**

- (1) ***Construction Materials.*** Exterior Walls for **New Construction Only** - Each exterior wall shall consist of 100% masonry materials as defined in *Article 14.1300 Definitions - Masonry*, excluding doors and windows, on walls which are visible from a public street or open space, including a minimum of 20% stone.

All buildings shall have exterior walls constructed of stone, brick, glass block, tile, cast metal, cast or cultured stone, or a combination of those materials. The use of other cementaceous products (e.g. stucco, Hardy Plank, or other similar materials approved by the Building Official) shall be limited to 50% of the buildings exterior finishes where it is deemed important as a design feature and where it will be applied under the highest standards for quality and durability. However, stucco may not be located in the first 8 feet above grade on a façade visible from a street or public area.

Exceptions to this requirement, including allowing concrete tilt-up walls, may be permitted on a case by case basis by the Planning and Zoning Commission or City Council upon submission and approval of elevation drawings of the subject structure, and material samples.

.....”

**SECTION 4.** That all provisions of the Lancaster Development Code in conflict with the provisions of this ordinance be, and the same are hereby, repealed, and all other provisions of the Lancaster Development Code not in conflict with the provisions of this ordinance shall remain in full force and effect.

**SECTION 5.** That should any word, sentence, paragraph, subdivision, clause, phrase or section of this ordinance, or of the Lancaster Development Code, as amended hereby, be adjudged or held to be void or unconstitutional, illegal or invalid, the same shall not affect the validity of the ordinance or the Lancaster Development Code, as amended hereby, as a whole, or any part or provision hereof other than the part so decided to be invalid, illegal or unconstitutional, and shall remain in full force and effect.

**SECTION 6.** That any person, firm or corporation violating any of the provisions or terms of this ordinance shall be subject to the same penalty as provided for in the Lancaster Development Code of the City of Lancaster, Texas as heretofore amended, and upon conviction shall be punished by a fine not to exceed the sum of two thousand dollars (\$2,000.00) for each offense.

**SECTION 7.** That this ordinance shall take effect from and after its passage and the publication of the caption as the law and Charter in such cases provide.

**DULY PASSED** by the City Council of the City of Lancaster, Texas, on the 23rd day of January, 2012.

**APPROVED:**

\_\_\_\_\_  
MARCUS E. KNIGHT, MAYOR

**ATTEST:**

\_\_\_\_\_  
DOLLE K. DOWNE, CITY SECRETARY

**APPROVED AS TO FORM:**

\_\_\_\_\_  
ROBERT E. HAGER, CITY ATTORNEY

P = Permitted      A = Accessory Use      S = SUP      "+" = Permitted with Conditions

Agric.		Residential								Permitted Uses	Commercial					Industrial		
A-O	SF-E	SF-4	SF-5	SF-6	ZL-7	ZF-6	TH-16	MF-16	MD1	2.1.6 Retail & Personal Services	NS	R	CH	CS	TC	ORT	LI	MI
										<b>Antique/Collectible Store</b>	<b>S-P</b>	P	P	P				
										Astrologer, Hypnotist, or Psychic Art and Science	P	P	P	P				
										Benquet Facility		P	P	P				
										Business School		P	P	P		P	P	
										<b>Catering Service</b>	<b>S-P</b>	P	P	P		S	P	
										<b>Christmas Tree Sales Lot &amp; Similar Uses, Temporary +</b>	<b>S-P</b>	P	P	P		S	P	P
										Convenience Store/Mini-mart	P	P	P	P				
										Convenience Store/Mini-mart w/ Drive-through							S	S
										Copy Center	P	P	P	P		P	P	P
										Display, Incidental +	P	P	P	P				
										Garden Supply/Plant Nursery +	S	P	P	P			P	
										General Personal Service	P	P	P	P			S	
										Grocery Store	P	P	P	P				
										Grocery Store w/ Drive-through							S	S
										Hair Salon, Manicurist	P	P	P	P				
										Laundry, Drop-off/Pickup	P	P	P	P			P	P
										Laundry, Self Service	P	P	P	P			P	P
										Massage Therapist	P	P	P	P				
										Movie Theater		P	P	P				
										<b>Museum or Art Gallery (Private)</b>	<b>S-P</b>	P		P		P	P	
										Night Club, Discoteque, or Dance Hall		S	P	P			S	S
										Pawn Shop			S	S			P	P
										Pet Shop	P	P	P	P				
										Private Club +	S	P	P	P		S	P	P
P	P	P	P	P	P	P	P	P	P	Real Estate Sales Office, On-site, Temporary +	P	P	P	P		P	P	P
										Rental Store, w/o Outside Storage and Display		S	S	S			S	P

P = Permitted      A = Accessory Use      S = SUP      "\*" = Permitted with Conditions

Agric.		Residential								Permitted Uses					Commercial					Industrial		
A-O	SF-E	SF-4	SF-5	SF-6	ZL-7	ZF-6	TH-16	MF-16	MH	2.1.6 Retail & Personal Services, Continued					NS	R	CH	CS	TC	ORT	LI	MI
										Restaurant, Less than 2000 Sq. Ft. w/ Drive Thru/Drive-in +	S	P	P	P						P	P	
										Restaurant, Less than 2000 Sq. Ft., w/o Drive-Thru/Drive-in	P	P	P	P						P	P	P
										Restaurant, 2000 Sq. Ft. or more, w/ Drive-Thru/Drive-in +	S	P	P	P							P	P
										Restaurant, 2000 Sq. Ft. or more, w/o Drive-Thru/Drive-in	S	P	P	P						S	P	P
										Restaurant, Less than 2000 Sq. Ft. w/Patio seating	S	P	P	P						S	P	P
										Restaurant, 2000 Sq. Ft. or more w/Patio seating	S	P	P	P						S	P	P
										Retail Store, 25,000 Sq. Ft. or more	S	S	P	P								
										Retail Store, Less than 25,000 Sq. Ft.	P	P	P	P							S	S
										Retail store with gasoline product sales limited to 2 fuel dispensers and 4 vehicles	S	P	P	P							P	P
										<b>Retail store with more than 2 fuel dispensers</b>		<b>S P</b>	P	P							P	P
										Secondhand Dealer		P	P	P							P	P
										Sexually Oriented Business +												P
										Studio - Art, Photography or Music	P	P	P	P							P	
										Tailor, Clothing or Apparel Shop	P	P	P	P								
										Tattoo, Body Piercing		S										
										Taxidermist Shop											P	P

P = Permitted      A = Accessory Use      S = SUP      "+" = Permitted with Conditions

Agric.	Residential									Permitted Uses	Commercial					Industrial			
	A-O	SF-E	SF-4	SF-5	SF-6	ZL-7	ZF-8	TH-16	MF-16		MH	NS	R	CH	CS	TC	ORT	LI	MI
											2.1.7 Commercial & Business Services								
											Bail Bond Service			S	P			P	P
											Building & Landscape Material with Outside Storage +		P	P	P			P	P
											Building Maintenance, Service & Sales with Outside Storage +				S			P	P
											Building Maintenance, Service & Sales without Outside Storage			P	P			P	P
S											Cemetery/ Mausoleum/ Mortuary		P	P	P			P	P
											Crematorium							S	P
											Custom & Craft Work			P	S			P	P
											<b>Electrical, Watch, Clock, Jewelry &amp; Similar Repair</b>	S P	P	P	P			P	P
											Feed Store, Ranch Supply			P	S			S	P
											Food Processing				S			P	P
											Furniture or Cabinet Repair			S	P			P	
											Furniture Upholstery, Refinishing or Resale			S	P			P	P
											Gunsmith Repair and Sales			S	P			P	P
											Heavy Machinery & Equipment (Rental, Sales & Service)			S	S			P	P
											Locksmith		P	P	P			P	P
											Machine Shop				S			P	P
											Medical or Scientific Research Lab			P	P		P	P	P
											Mobile Home/Trailer Sales Lot				S			S	P
											Portable Buildings - Commercial +		S	S	S		S	S	S
											Research and Technology / Light Assembly			P	P		P	P	P
											Shoe and Boot Repair and Sales	P	P	P	P				
											Trade School			S	S		P	P	P
P	P	P	P	P	P	P	P	P	P		Temporary On-site Construction Office +	P	P	P	P		P	P	P

P = Permitted      A = Accessory Use      S = SUP      "+" = Permitted with Conditions

Agric.		Residential								Permitted Uses	Commercial					Industrial		
A-O	SF-E	SF-4	SF-5	SF-6	ZL-7	ZF-6	TH-16	MF-16	MH		NS	R	CH	CS	TC	ORT	LI	MI
										2.1.8 Auto & Marine-Related								
										Auto Repair Garage, Major +							S	P
										Auto Repair Garage, Minor +		S	S	P			P	P
										Automobile Rental			S	P			P	P
										Boat & Trailer Dealership (New and Used) +				P	P		P	P
										<b>Car Wash/Auto Detail +</b>	S	<b>SP</b>	<b>SP</b>	P			P	P
										Car Wash, Self Service		S		P			P	P
										Motor Vehicle Dealership, New & Used (Cars and Light Trucks) +				P	S		P	P
										Parking, Commercial				P	P		P	P
										Parking Lot, non-commercial	S	P	P	P		P	P	P
										Recreational Vehicle (RV) Sales and Service				S	P		P	P
										Service Station +	S	P	P	P			P	P
										Towing & Impound Yard				S			S	P
										Towing Service, No Storage				S			P	P
										Truck Rental				P			P	P
										Truck Stop with Fuel and Accessory Services +				S			S	P

# PLANNING & ZONING COMMISSION

Agenda Communication for  
January 10, 2012

#2

**M12-01 Conduct a Public Hearing and Consider an ordinance of the City of Lancaster, Texas, amending the Lancaster Development Code by amending Article 14.400, section 14.401 Land Use Table, subsection 2.1.6 Retail & Personal Services, subsection 2.1.7 Commercial & Business Services, and subsection 2.1.8 Auto & Marine-related for the purpose of allowing certain uses to be allowed by right and not require a Specific Use Permit (SUP); amending Article 14.400, section 14.402 b(3) Bed and Breakfast Operation, to allow Bed and Breakfast operations In the Historic Town Square; amending Article 14.500, section 14.505 Industrial Districts, for the purpose of removing the requirement for buildings in Industrial zoned areas to have masonry facades wherever they face a public right-of-way.**

## Background

Periodically, the Lancaster Development Code (LDC) is reviewed by Staff to ensure that the regulations contained within are current and appropriate. Sections are reviewed to address the requirements placed upon land uses, the definitions of uses, the location uses are allowed, and other language and information contained in the LDC. These reviews lead to amendments being made to update and change the LDC to more appropriately reflect the best possible environment for Lancaster's citizens, property owners and the development community.

In this round of reviews, Staff looked at the appropriateness of Specific Use Permit (SUP) designations for multiple uses, the allowances of uses in certain areas and the requirements placed on uses in multiple zoning districts. From this review, it was determined that several amendments should be proposed to minimize the encumbrances placed on the development community when bringing forward new construction, development, and/or business to the city.

Following are the proposed changes to the Lancaster Development Code:

**AMENDMENT – Article 14.400 Permissible Uses**  
**Section 14.401 Land Use Tables**

In reviewing the Land Use Tables, Staff found seven (7) uses that required an SUP designation that would be more feasible to allow them by right. These land uses primarily required an SUP in the Neighborhood Services zoning district while being allowed by right in other zoning districts. Because of their size, potential hours of operations, and nature of their business, Staff concluded that an SUP would not be necessary for these land uses. The rationale for an SUP is typically to safeguard an area from potential harmful effects caused by one use upon another. The seven land uses that are being proposed to be allowed by right and the zoning district the change is being proposed for is as follows (black is existing, red is proposed):

**Subsection 2.1.6 Retail & Personal Services**

<b>Land Use</b>	<b>NS</b>	<b>R</b>	<b>CH</b>	<b>CS</b>	<b>ORT</b>	<b>LI</b>	<b>MI</b>
Antique/Collectible Store	S P	P	P	P			
Catering Service	S P	P	P	P	S P	P	
Christmas Tree Sales Lot & Similar Uses, Temporary+	S P	P	P	P	S P	P	P
Museum or Art Gallery (private)	S P	P		P	P	P	
Retail store with more than 2 fuel dispensers		S P	P	P		P	P

**Subsection 2.1.7 Commercial & Business Services**

<b>Land Use</b>	<b>NS</b>	<b>R</b>	<b>CH</b>	<b>CS</b>	<b>ORT</b>	<b>LI</b>	<b>MI</b>
Electrical, Watch, Clock, Jewelry & Similar Repair	S P	P	P	P		P	P

**Subsection 2.1.8 Auto & Marine-Related**

<b>Land Use</b>	<b>NS</b>	<b>R</b>	<b>CH</b>	<b>CS</b>	<b>ORT</b>	<b>LI</b>	<b>MI</b>
Car Wash/Auto Detail+	S	S P	S P	P		P	P

**AMENDMENT – Article 14.400 Permissible Uses**  
**Section 14.402 b(3) Bed and Breakfast Operation**

In reviewing the areas that a Bed and Breakfast is allowed, Staff noticed that they are not allowed within the Historic Town Square. By adding this land use to the Town Square, it could potentially increase the awareness of the city's Historic District as well as stimulate additional interest in the Town Square by creating another type of tourist attraction. A Bed and Breakfast would be allowed only where residential units are currently allowed and not on the first floor which would remain for retail shops, offices, and restaurants. Staff proposes the LDC be amended by adding the language of where Bed and Breakfast operations are allowed to be located in this section as follows:

(3) Bed and Breakfast Operation

A. A "bed and breakfast" must be located on an owner-occupied single family lot, or on an immediately adjacent lot, or in the Historic Town Square in the Downtown District where residential units are allowed.

**AMENDMENT – Article 14.500 District Development Regulations and Standards**  
**Section 14.505 Industrial Districts**

Land zoned for Industrial uses is typically occupied by manufacturing and warehouse buildings in areas either concentrated in locations out of general travel patterns or on the periphery of the city. The LDC requires land uses in these areas to be screened with trees and shrubs from the public rights-of-way. This screening criterion usually obstructs most, if not all, of the view of the building from the street. Many of the structures use building materials that are primarily metal or tilt wall, which are not complementary materials for masonry. Given these factors, the requirement of a masonry front façade is obsessive when placed in context with the built environment and nature of these areas. Therefore, Staff proposes the removal of the requirement for buildings in Industrial zoned areas to have masonry façades on walls which are visible from a public street or open space. Staff proposes the LDC to be amended as follows:

(a) **General Industrial District Standards.**

- (1) Construction Materials. ~~Exterior Walls - Each exterior wall shall consist of 100% masonry materials as defined in Article 14.1300 Definitions - Masonry, excluding doors and windows, on walls which are visible from a public street or open space, including a minimum of 20% stone.~~

All buildings shall have exterior walls constructed of stone, brick, glass block, tile, cast metal, cast or cultured stone, or a combination of those materials. The use of other cementaceous products (e.g. stucco, Hardy Plank, or other similar materials approved by the Building Official) shall be limited to 50% of the buildings exterior finishes where it is deemed important as a design feature and where it will be applied under the highest standards for quality and durability. However, stucco may not be located in the first 8 feet above grade on a façade visible from a street or public area.

Exceptions to this requirement, including allowing concrete tilt-up walls, may be permitted on a case by case basis by the Planning and Zoning Commission or City Council upon submission and approval of elevation drawings of the subject structure, and material samples.

**Considerations**

• Public Information

On Friday, November 25, 2011 a Public Hearing notice appeared in the Focus Daily News, the City of Lancaster's newspaper of record. The Lancaster Development Code (LDC) requires two public hearings and legal notification in the City's newspaper

of the record to approve a text amendment. This is the first of the two public hearings; the second being at City Council on January 23, 2012.

### **Options/Alternatives**

- 1) Recommend approval, as requested.
- 2) Recommend approval in accordance with modifications and said modifications shall be stipulations of approval.
- 3) Postpone consideration.
- 4) Recommend denial of the request.

### **Recommendation**

Staff recommends **approval** of the changes to the Lancaster Development Code in reference to items being proposed.

### **Approval Process**

Upon recommendation by the Planning and Zoning Commission, the City Council will conduct a public hearing and render a final decision for this item at their January 23, 2012, regular meeting.

### **Attachments**

- Land-use Table from the LDC – Redlined (4 pages)
- Excerpts from the LDC (2 pages)

### **Prepared and Submitted by:**

Nathaniel Bamett  
Senior Planner

**Date:** January 5, 2012

P = Permitted    A = Accessory Use    S = SUP    "+" = Permitted with Conditions

Agric.		Residential								Permitted Uses	Commercial					Industrial		
A-O	SF-E	SF-4	SF-5	SF-6	ZL-7	2F-6	TH-16	MF-16	MH	2.1.6 Retail & Personal Services	NS	R	CH	CS	TC	ORT	LI	MI
										Antique/Collectible Store	S-P	P	P	P				
										Astrologer, Hypnotist, or Psychic Art and Science	P	P	P	P				
										Banquet Facility		P	P	P				
										Business School		P	P	P		P	P	
										Catering Service	S P	P	P	P		S	P	
										Christmas Tree Sales Lot & Similar Uses, Temporary +	S-P	P	P	P		S	P	P
										Convenience Store/Mini-mart	P	P	P	P				
										Convenience Store/Mini-mart w/ Drive-through							S	S
										Copy Center	P	P	P	P		P	P	P
										Display, Incidental +	P	P	P	P				
										Garden Supply/Plant Nursery +	S	P	P	P			P	
										General Personal Service	P	P	P	P			S	
										Grocery Store	P	P	P	P				
										Grocery Store w/ Drive-through							S	S
										Hair Salon, Manicurist	P	P	P	P				
										Laundry, Drop-off/Pickup	P	P	P	P			P	P
										Laundry, Self Service	P	P	P	P			P	P
										Massage Therapist	P	P	P	P				
										Movie Theater		P	P	P				
										Museum or Art Gallery (Private)	S-P	P		P		P	P	
										Night Club, Discoteque, or Dance Hall		S	P	P			S	S
										Pawn Shop			S	S			P	P
										Pet Shop	P	P	P	P				
										Private Club +	S	P	P	P		S	P	P
P	P	P	P	P	P	P	P	P	P	Real Estate Sales Office, On-site, Temporary +	P	P	P	P		P	P	P
										Rental Store, w/o Outside Storage and Display		S	S	S			S	P

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Agric.		Residential								Permitted Uses	Commercial					Industrial		
A-O	SF-E	SF-4	SF-5	SF-6	ZL-7	2F-8	TH-16	MF-16	MH	2.1.6 Retail & Personal Services, Continued	NS	R	CH	CS	TC	ORT	LI	MI
										Restaurant, Less than 2000 Sq. Ft., w/ Drive Thru/Drive-in +	S	P	P	P			P	P
										Restaurant, Less than 2000 Sq. Ft., w/o Drive-Thru/Drive-in	P	P	P	P		P	P	P
										Restaurant, 2000 Sq. Ft. or more, w/ Drive-Thru/Drive-in +	S	P	P	P			P	P
										Restaurant, 2000 Sq. Ft. or more, w/o Drive-Thru/Drive-in	S	P	P	P		S	P	P
										Restaurant, Less than 2000 Sq. Ft. w/Patio seating	S	P	P	P		S	P	P
										Restaurant, 2000 Sq. Ft. or more w/Patio seating	S	P	P	P		S	P	P
										Retail Store, 25,000 Sq. Ft. or more	S	S	P	P				
										Retail Store, Less than 25,000 Sq. Ft.	P	P	P	P			S	S
										Retail store with gasoline product sales limited to 2 fuel dispensers and 4 vehicles	S	P	P	P			P	P
										Retail store with more than 2 fuel dispensers		S P	P	P			P	P
										Secondhand Dealer		P	P	P			P	P
										Sexually Oriented Business +								P
										Studio - Art, Photography or Music	P	P	P	P			P	
										Tailor, Clothing or Apparel Shop	P	P	P	P				
										Tattoo, Body Piercing		S						
										Taxidermist Shop							P	P

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Agric.		Residential								Permitted Uses		Commercial					Industrial		
A-O	SF-E	SF-4	SF-5	SF-6	ZL-7	2F-6	TH-16	MF-16	MH	2.1.7 Commercial & Business Services	NS	R	CH	CS	TC	ORT	LI	MI	
										Beil Bond Service			S	P			P	P	
										Building & Landscape Material with Outside Storage +		P	P	P			P	P	
										Building Maintenance, Service & Sales with Outside Storage +				S			P	P	
										Building Maintenance, Service & Sales without Outside Storage			P	P			P	P	
S										Cemetery/ Mausoleum/ Mortuary		P	P	P			P	P	
										Crematorium							S	P	
										Custom & Craft Work			P	S			P	P	
										Electrical, Watch, Clock, Jewelry & Similar Repair	S P	P	P	P			P	P	
										Feed Store, Ranch Supply			P	S			S	P	
										Food Processing				S			P	P	
										Furniture or Cabinet Repair			S	P			P		
										Furniture Upholstery, Refinishing or Resale			S	P			P	P	
										Gunsmith Repair and Sales			S	P			P	P	
										Heavy Machinery & Equipment (Rental, Sales & Service)			S	S			P	P	
										Locksmith		P	P	P			P	P	
										Machine Shop				S			P	P	
										Medical or Scientific Research Lab			P	P		P	P	P	
										Mobile Home/Trailer Sales Lot				S			S	P	
										Portable Buildings - Commercial +		S	S	S		S	S	S	
										Research and Technology / Light Assembly			P	P		P	P	P	
										Shoe and Boot Repair and Sales	P	P	P	P					
										Trade School			S	S		P	P	P	
P	P	P	P	P	P	P	P	P	P	Temporary On-site Construction Office +	P	P	P	P		P	P	P	

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Agric.	Residential									Permitted Uses	Commercial					Industrial		
	A-O	SF-E	SF-4	SF-5	SF-6	ZL-7	2F-8	TH-18	MF-18		MH	NS	R	CH	CS	TC	ORT	LI
											2.1.8 Auto & Marine-Related							
											Auto Repair Garage, Major +						S	P
											Auto Repair Garage, Minor +	S	S	P			P	P
											Automobile Rental		S	P			P	P
											Boat & Trailer Dealership (New and Used) +			P	P		P	P
											Car Wash/Auto Detail +	S	S	P	P		P	P
											Car Wash, Self Service		S		P		P	P
											Motor Vehicle Dealership, New & Used (Cars and Light Trucks) +			P	S		P	P
											Parking, Commercial			P	P		P	P
											Parking Lot, non-commercial	S	P	P	P	P	P	P
											Recreational Vehicle (RV) Sales and Service			S	P		P	P
											Service Station +	S	P	P	P		P	P
											Towing & Impound Yard				S		S	P
											Towing Service, No Storage				S		P	P
											Truck Rental				P		P	P
											Truck Stop with Fuel and Accessory Services +				S		S	P

2. Side Setback: 3 ft.
3. Separation from other structures: 3 ft.

**B. Accessory Buildings 121-225 s.f. and up to 15 ft in Height**

1. Rear Setback: 3 ft.
2. Side Setback: Required Zoning District Setback.
3. Separation from other structures: 6 ft.

**C. Detached Garages 226-900 s.f. and up to 15 ft. in Height**

1. Rear Setback: With Alley — 20 ft. with garage doors facing alley, 3 ft. without garage doors facing alley,  
Without Alley — 10 ft.
2. Side Setback: *Required Zoning District Setback.*
3. Separation from other structures: 10 ft.

**(3) Bed and Breakfast Operation**

- A. A “bed and breakfast” must be located on an owner-occupied single family lot, or on an immediately adjacent lot, or in the Historic Town Square in the Downtown District.
- B. One (1) parking space per bedroom to be rented shall be provided above the single family parking requirement
- C. No outside advertising shall be allowed on the lot unless located in a non-residential zoning district or permitted by an SUP.
- D. A permanent wired smoke alarm system meeting all City codes shall be installed.
- E. The premises shall pass a fire code inspection before opening and on an annual basis thereafter.
- F. All applicable hotel/motel taxes shall be paid.
- G. The maximum length of stay is limited to 14 consecutive days in any 30 day period.
- H. A Certificate of Occupancy permit shall be obtained prior to occupancy.

**(4) Carport (Residential)**

- A. In residential districts, Carports must be open on at least two (2) sides and be located at least 20 feet behind the corner of the front façade or meet the garage setback adjacent to an alley. It must also meet the minimum required side yard setbacks for a detached garage
- B. Carports which are visible from a public street must be constructed of materials matching those of the primary residential structure.
- C. Carports not meeting these standards must obtain an SUP.
- D. Porte-cocheres are not considered carports, and are allowed, provided that they are attached and integral with the design of the house.

**(5) Duplex**

- A. Limited to two (2) families.
- B. The dwelling must be permanently attached to a concrete foundation.
- C. The primary roof pitch must be at least 4 in 12 inches.
- D. The duplex must have 1-hour fire wall separating the units.

**Sec. 14.505 Industrial Districts**

**(a) General Industrial District Standards.**

- (1) Construction Materials. Exterior Walls - ~~Each exterior wall shall consist of 100% masonry materials as defined in Article 14.1300 Definitions - Masonry, excluding doors and windows, on walls which are visible from a public street or open space, including a minimum of 20% stone.~~

All buildings shall have exterior walls constructed of stone, brick, glass block, tile, cast metal, cast or cultured stone, or a combination of those materials. The use of other cementaceous products (e.g. stucco, Hardy Plank, or other similar materials approved by the Building Official) shall be limited to 50% of the buildings exterior finishes where it is deemed important as a design feature and where it will be applied under the highest standards for quality and durability. However, stucco may not be located in the first 8 feet above grade on a façade visible from a street or public area.

Exceptions to this requirement, including allowing concrete tilt-up walls, may be permitted on a case by case basis by the Planning and Zoning Commission or City Council upon submission and approval of elevation drawings of the subject structure, and material samples.

(2) Maximum Building Height.

- A. All Districts. The height limit for all structures shall be as established in the Districts governing the property on which the structures are located, and the exceptions to height setback standards below.
- B. Building Height and Setback Exceptions for Industrial Districts.

Exceptions. The following features may be constructed 12 feet higher than the maximum height requirement of the zoning district in which the structure is located:

1. Chimneys, church spires, elevator shafts, and similar appendages not intended as places of occupancy or storage.
2. Flag poles and similar devices.
3. Heating and air conditioning equipment, solar collectors and similar equipment, fixtures, and devices.

Provided that they are:

1. Not more than one-third of the total roof area; and
2. Set back from the edge of the roof a minimum distance of two feet for every foot by which such features extend above the roof surface of the building to which they are attached.

(3) Building Articulation.

- A. Requirements. Facades which face streets shall meet the following minimum standards for articulation:

1. Horizontal Articulation. No building wall shall extend for a distance equal to 4 times the wall's height without having an off-set of 25% of the wall's height,



**REGULAR MEETING MINUTES  
PLANNING & ZONING COMMISSION  
CITY OF LANCASTER, TEXAS  
TUESDAY, JANUARY 10, 2012**



**CALL TO ORDER:**

Chair Colton called the meeting to order at 7:00 p.m. on January 10, 2012.

**COMMISSIONERS**

**MARY JANE COLTON, CHAIR  
QUINNIE WRIGHT, VICE CHAIR  
MARIAN ELKINS  
JAMES MITCHELL – not present  
LAWRENCE PROTHRO**

**CITY STAFF**

**RONA STRINGFELLOW-GOVAN  
NATHANIEL BARNETT  
ALEXIS ALLEN**

**DIRECTOR OF DEVELOPMENT SERVICES  
SENIOR PLANNER  
CITY ATTORNEY**

**CITIZENS COMMENTS:** (At this time citizens will be allowed to speak only on matters contained on the Planning and Zoning Commission agenda)

**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 Commission member may request one or more items to be removed from the consent agenda for separate discussion and action.

1. Consideration of the November 1, 2011 Regular Meeting Minutes.

Chair Colton entertained a motion for the consent agenda.

**COMMISSIONER ELKINS MADE THE MOTION TO APPROVE THE MINUTES FROM NOVEMBER 1<sup>ST</sup>, SECONDED BY VICE CHAIR WRIGHT.**

**AYES: COLTON, ELKINS, PROTHRO, WRIGHT  
NAYES: NONE**

**THE MOTION CARRIED 4-0.**

**PUBLIC HEARING**

2. **M12-01** Conduct a Public Hearing and Consider an ordinance of the City of Lancaster, Texas, amending the Lancaster Development Code by amending Article 14.400, section 14.401 Land Use Table, subsection 2.1.6 Retail & Personal Services, subsection 2.1.7 Commercial & Business Services, and subsection 2.1.8 Auto & Marine-related for the purpose of allowing certain uses to be allowed by right and not require a Specific Use Permit (SUP); amending Article 14.400, section 14.402 b(3) Bed and Breakfast Operation, to allow Bed and Breakfast operations in the Historic Town Square; amending Article 14.500, section 14.505 Industrial Districts, for the purpose of removing



**REGULAR MEETING MINUTES  
PLANNING & ZONING COMMISSION  
CITY OF LANCASTER, TEXAS  
TUESDAY, JANUARY 10, 2012**



the requirement for buildings in Industrial zoned areas to have masonry facades wherever they face a public right-of-way.

Senior Planner Nathaniel Barnett gave a presentation regarding the proposed amendments to the Lancaster Development Code (LDC). He outlined each amended and gave the rationale for each proposal. Senior Planner Barnett stated that changing the allowance of uses requiring Specific Use Permits (SUP) to being allowed by right is sensible due to the size of the potential uses and the non-intrusiveness of the particular uses. He also mentioned the allowance of bed and breakfast uses in the Town Square area would bring more tourism and synergy to the square. Regarding the requirement for masonry fronts on buildings in the Light Industrial area, Senior Planner Barnett explained the complexities involved in retrofitting some of these building and the impediments it caused for potential businesses.

Chair Colton opened the public hearing.

**IN FAVOR:**

None

**OPPOSED:**

None

Chair Colton entertained a motion to close the public hearing.

**VICE CHAIR WRIGHT MADE A MOTION TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER ELKINS.**

**AYES: COLTON, ELKINS, PROTHRO, WRIGHT**

**NAYES: NONE**

**THE MOTION CARRIED 4-0.**

**Discussion of Item 2**

Chair Colton stated she was concerned with the potential of lowering standards in the city. She stated that she called several cities to ask what their requirements were for buildings in the light industrial area. Chair Colton did not want us to damage the visual image of the city.

Commissioner Elkins also expressed concern about the quality of development in Lancaster as compared to surrounding cities. She didn't want the city to be compared negatively to others.

Director Rona Stringfellow-Govan clarified that the removal of the masonry requirement in industrial areas would be for existing structures. She also stated that Council has directed Staff to look into a Tax Increment Financing (TIF) district for the I-35E corridor to improve the area. Senior Planner Barnett stated that masonry is not the only item that can make a building more attractive but other items such as painting, various building materials and screening would also improve the aesthetic quality of the area.



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Vice Chair Wright stated that in other cities she was aware that there were other building materials being used for new constructions that were very appealing.

Chair Colton divided the agenda item and entertained a motion on each amended section.

**COMMISSIONER ELKINS MADE A MOTION TO APPROVE THE AMENDMENT FOR ARTICLE 14.400, SECTION 14.401, SECONDED BY VICE CHAIR WRIGHT.**

**AYES: COLTON, ELKINS, PROTHRO, WRIGHT  
NAYES: NONE**

**THE MOTION CARRIED 4-0.**

**VICE CHAIR WRIGHT MADE A MOTION TO APPROVE THE AMENDMENT FOR ARTICLE 14.400, SECTION 14.402, SECONDED BY COMMISSIONER ELKINS.**

**AYES: COLTON, ELKINS, PROTHRO, WRIGHT  
NAYES: NONE**

**THE MOTION CARRIED 4-0.**

**COMMISSIONER MITCHELL MADE A MOTION TO APPROVE THE AMENDMENT FOR ARTICLE 14.500, SECTION 14.505 AS APPLIED TO EXISTING BUILDINGS, SECONDED BY VICE CHAIR WRIGHT.**

**AYES: ELKINS, PROTHRO, WRIGHT  
NAYES: COLTON**

**THE MOTION CARRIED 3-1.**

**DISCUSSION**

3. Review of meeting conduct material, work session information, and 2012 meeting schedule.

Senior Planner Barnett gave a brief presentation regarding on the material covered in the recent work session held for the commission. He also mentioned that in the coming year the goal was to get more educational opportunities for the commission. He also stated that each commissioner had been given a copy of the Robert's Rules of Order book for running a meeting and that information that was applicable to the commission had been written and given to each commissioner. Finally Senior Planner Barnett presented a schedule for meetings for the year highlighting that some meetings had been changed due to holidays.

Chair Colton entertained a motion to adjourn.

**A MOTION WAS MADE BY COMMISSIONER ELKINS AND SECONDED BY COMMISSIONER PROTHRO TO ADJOURN.**



**REGULAR MEETING MINUTES  
PLANNING & ZONING COMMISSION  
CITY OF LANCASTER, TEXAS  
TUESDAY, JANUARY 10, 2012**



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**AYES: COLTON, ELKINS, PROTHRO, WRIGHT  
NAYES: NONE**

**THE MOTION CARRIED 4-0.**

Meeting was adjourned at 7:59 p.m.

---

Mary Jane Colton, Chair

**ATTEST**

---

Nathaniel Barnett, Senior Planner

DRAFT

**LANCASTER CITY COUNCIL**  
Agenda Communication for  
January 23, 2012

**5**

AG12-005

**Discuss and consider a resolution approving the terms and conditions of the Letter Agreement providing for consent of assignment of the Tax Abatement Agreement with CS Lancaster LLC to Duke Realty Limited Partnership; authorizing the City Manager to execute the Letter Agreement.**

**This request supports the City Council 2011-2012 Policy Agenda.**

**Goal: Quality Development**

**Background**

In 2009, the City entered into a tax abatement agreement with Seefried Properties (CS Lancaster LLC) in association with their property at West Road and IH35. A provision in the agreement allows for the agreement to be assigned to other parties. Seefried Properties has sold their property to Duke Realty Partnership and is exercising the assignment provision of the agreement and is requesting assignment of the agreement to Duke. The agreement will expire in April, 2013 if no construction has commenced on the property.

**Considerations**

- **Operational** – Administration and monitoring of the agreement are within the capabilities of staff.
- **Legal** – The City Attorney has reviewed and approved all documents.
- **Financial** – There is no financial impact at this time. Should construction commence on the property before expiration of the agreement, a 70% property tax abatement for 7 years will apply based on the value of improvements to the property and the property tax rate at that time.
- **Public Information** - There is no public information requirement associated with this item.

**Options/Alternatives**

1. The City Council may approve the resolution authorizing the assignment of the Tax Abatement Agreement.
2. The City Council may deny the resolution and direct staff.

**Recommendation**

Staff recommends approval of the resolution authorizing the Letter Agreement assigning the Tax Abatement Agreement with CS Lancaster LLC to Duke Realty Limited Partnership.

**Attachments**

- Resolution
- Letter Agreement – Exhibit A
- Tax Abatement Agreement

**Prepared and submitted by:**  
Ed Brady, Director of Economic Development

**Date:** January 11, 2012

**RESOLUTION NO. 2012-01-11**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, APPROVING THE TERMS AND CONDITIONS OF THE LETTER AGREEMENT PROVIDING FOR CONSENT OF ASSIGNMENT OF THE TAX ABATEMENT AGREEMENT WITH CS LANCASTER LLC TO DUKE REALTY LIMITED PARTNERSHIP, WHICH IS ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE AS EXHIBIT "A"; AUTHORIZING THE CITY MANAGER TO EXECUTE SAID LETTER AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Lancaster ("City") has approved a Tax Abatement Agreement with CS Lancaster LLC ("CS Lancaster LLC") in connection with the development of a distribution center on West Road and IH 35; and

**WHEREAS**, CS Lancaster LLC has sold its property at West Road and IH 35 to Duke Realty Limited Partnership, an Indiana limited partnership; and

**WHEREAS**, assignment of said tax abatement agreement requires the approval of the Lancaster City Council;

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

**SECTION 1.** That the City Council of the City of Lancaster, Texas hereby consents to the assignment of a Tax Abatement Agreement under the terms and conditions set for in the Letter Agreement, which is attached hereto and incorporated herein as Exhibit "A".

**SECTION 2.** That the City Council hereby authorizes the City Manager to execute said Letter Agreement.

**SECTION 3.** This resolution shall take effect immediately from and after its passage and the publication of the caption 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 23<sup>rd</sup> day of January 2012.

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Dolle K. Downe, City Secretary

\_\_\_\_\_  
Marcus E. Knight, Mayor

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Robert E. Hager, City Attorney

Exhibit A



Corporate Office

191 Peachtree Street NE  
Suite 500  
Atlanta, GA 30303-1740

LETTER AGREEMENT

January 23, 2012

City of Lancaster  
211 North Henry Street  
Lancaster, Texas 75146  
Attention: Opal Mauldin Robertson, City Manager

Re: Consent to Assignment of Tax Abatement Agreement dated June 18, 2009 executed by and between CS Lancaster LLC, a Georgia limited liability company and the City of Lancaster, Texas, to Duke Realty Limited Partnership, an Indiana limited partnership, pursuant to that certain assignment of Tax Abatement Agreement, Section 8.10.

Dear Ms. Robertson:

In accordance with Section 8.10 of the Tax Abatement Agreement, CS Lancaster LLC intends to assign its rights under the Tax Abatement Agreement to Duke Realty Limited Partnership and, the assignee shall accept all the terms and conditions of said Agreement.

By their execution of this Letter Agreement, the City evidences their consent to the assignment of the Tax Abatement Agreement, by CS Lancaster LLC to Duke Realty Limited Partnership.

If the foregoing correctly sets forth the understanding of the City of Lancaster, please indicate the City's consent by signing in the appropriate space below and returning to CS Lancaster LLC executed counterparts hereof, whereupon this letter of agreement shall become a binding agreement between us.

**CS LANCASTER LLC**  
a Georgia Limited Liability Company

By: CP Lakeside Land GP, LLC,  
a Georgia limited liability company,  
its general partner

By: Cousins Properties Inc.  
a Georgia corporation,  
its sole member

By: \_\_\_\_\_  
Jack A. LaHue, Sr. Vice President  
Portfolio Leasing

Accepted this 23<sup>rd</sup> day of January, 2012

CITY OF LANCASTER, TEXAS

By: \_\_\_\_\_  
Opal Mauldin Robertson, City Manager

**ATTEST:**

By: \_\_\_\_\_  
Dolle K. Downe, City Secretary

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Robert E. Hager, City Attorney

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

**TAX ABATEMENT AGREEMENT**

This Tax Abatement Agreement (the "Agreement") is entered into by and between the City of Lancaster, Texas (the "City"), and CS Lancaster LLC, a Georgia limited liability company ("CS Lancaster"), acting by and through their authorized representatives.

**WITNESSETH:**

**WHEREAS**, the City Council of the City of Lancaster, Texas (the "City"), passed an Ordinance (the "Ordinance") establishing Tax Abatement Guidelines, as authorized by the Tax Abatement Act, Chapter 312 of the Texas Tax Code, as amended (the "Tax Code"); and

**WHEREAS**, the Tax Abatement Guidelines contain appropriate guidelines and criteria governing tax abatement agreements to be entered into by the City as contemplated by the Tax Code; and

**WHEREAS**, the City has adopted a resolution stating that it elects to be eligible to participate in tax abatement; and

**WHEREAS**, in order to maintain and enhance the commercial and industrial economic and employment base of the Lancaster area, it is in the best interests of the taxpayers for the City to enter into this Agreement in accordance with said Tax Abatement Guidelines and the Tax Code; and

**WHEREAS**, CS Lancaster owns approximately 47.152 acres of land and being further described in Exhibit "A" ("Land") and intends to construct an industrial building (the "Building") and improvements relating thereto (hereinafter defined as the "Improvements") on the Land; and

**WHEREAS**, CS Lancaster's development efforts described herein will create permanent new jobs in the City; and

**WHEREAS**, the City Council finds that the contemplated use of the Premises (hereinafter defined), the contemplated Improvements thereto in the amount set forth in this Agreement, and the other terms hereof are consistent with encouraging development of the property in compliance with the Tax Abatement Guidelines, the Ordinance adopted by the City, the Tax Code and all other applicable laws; and

**WHEREAS**, the City Council finds that the Improvements sought are feasible and practicable and would be of benefit to the Premises to be included on the property and to the City after expiration of this Agreement; and

**WHEREAS**, a copy of this Agreement has been furnished, in the manner prescribed by the Tax Code, to the presiding officers of the governing bodies of each of the taxing units in which the Premises is located; and

**WHEREAS**, the City desires to enter into an agreement with the CS Lancaster for the abatement of taxes pursuant to Chapter 312 of the Tax Code as amended;

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

### **Article I Definitions**

Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

“Base Year Taxable Value” shall mean the Taxable Value for the Land for the year in which the Tax Abatement Agreement is executed (2009).

“Commencement of Construction” shall mean that: (i) the plans have been prepared and all approvals thereof and permits with respect thereto required by applicable governmental authorities have been obtained for construction of the Improvements; (ii) all necessary permits for the initial construction of the Improvements on the Land pursuant to the respective plans therefore having been issued by all applicable governmental authorities; and (iii) grading of the Land or the construction of the vertical elements of the Improvements has commenced.

“Completion of Construction” shall mean: (i) substantial completion of the Improvements; and (ii) a final certificate of occupancy has been issued for the Building.

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

“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 a 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.

“First Year of Abatement” shall mean January 1 of the calendar year immediately following the date of Completion of Construction.

“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, riot, civil commotion, insurrection, adverse weather, government or de facto governmental action (unless caused by acts or omissions of such party), fires, explosions or floods, strikes, slowdowns or work stoppages.

"Improvements" shall mean the industrial building/warehouse with costs incurred of at least \$5,000,000 relating thereto to be constructed on the Land and other ancillary facilities such as reasonably required parking and landscaping more fully described in the submittals filed by CS Lancaster with the City, from time to time, in order to obtain a building permit(s).

"Land" means the real property described in Exhibit "A".

"Premises" shall collectively mean the Land and the Improvements following construction thereof.

"Taxable Value" means the appraised value as certified by the Appraisal District as of January 1 of a given year.

## **Article II General Provisions**

2.1 CS Lancaster is the owner of the Land, which Land is located within the city limits of the City. CS Lancaster intends to construct the Improvements on the Land.

2.2 The Premises are not in an improvement project financed by tax increment bonds.

2.3 The Premises are not owned or leased by any member of the Lancaster City Council or any member of the Lancaster Planning and Zoning Commission, or any member of the governing body of any taxing units joining in or adopting this Agreement.

2.4 CS Lancaster agrees to provide to any tenants of the Premises the benefit of the tax abatement of the Improvements granted herein. CS Lancaster shall, upon written request, provide the City with satisfactory evidence that the benefits of this Tax Abatement Agreement have been provided to any such tenants.

2.5 CS Lancaster shall before May 1 of each calendar year that the Agreement is in effect, certify in writing to the City that it is in compliance with each term of the Agreement.

2.6 The Land and the Improvements constructed on the Premises thereon at all times shall be used in the manner that is consistent with the Lancaster Development Code, as amended.

## **Article III Tax Abatement Authorized**

3.1 This Agreement is authorized by the Tax Code and in accordance with the City Tax Abatement Guidelines, and approved by resolution of the City Council.

3.2 Subject to the terms and conditions of this Agreement, and provided the Taxable Value for the Improvements, excluding the Land, is at least \$5,000,000.00 as of January 1 of the First Year of Abatement and as of January 1 of each year thereafter that this Agreement is in effect,

the City hereby grants CS Lancaster an abatement of seventy percent (70%) of the Taxable Value of the Land, Improvements, and Business Personal Property necessary to the operation and administration of the Improvements for a period of seven (7) consecutive years beginning with the First Year of Abatement. Notwithstanding the foregoing, if such requirement is not met due to a casualty of the Building, such requirement shall be deemed satisfied if during such year the Building is reconstructed in a manner which does satisfy such requirement. The actual percentage of Taxable Value of the Land and Improvements subject to abatement for each year this Agreement is in effect will apply only to the portion of the Taxable Value of the Land and Improvements that exceeds the Base Year Taxable Value.

3.3 The period of tax abatement herein authorized shall be for a period of seven (7) consecutive years, beginning upon Commencement of Construction and Improvements within the timeline provided in (Article IV Section 4.2) and ending at the end of the seventh year thereafter.

3.4 During the period of tax abatement herein authorized, CS Lancaster shall be subject to all taxation not abated, including but not limited to, sales tax and ad valorem taxation on inventory and supplies, if applicable.

#### **Article IV Improvements**

4.1 CS Lancaster owns the Land and intends to construct or cause to be constructed thereon the Improvements. Nothing in this Agreement shall obligate CS Lancaster to construct the Improvements on the Land but said action is a condition precedent to tax abatement pursuant to this Agreement.

4.2 As a condition precedent to the initiation of CS Lancaster's tax abatement pursuant to this Agreement, CS Lancaster agrees, subject to events of Force Majeure, to cause Commencement of Construction of the Improvements to occur within four (4) calendar years after the effective date, as good and valuable consideration for this Agreement, and that all construction of the Improvements will be in accordance with all applicable state and local laws, codes, and regulations (or valid waiver thereof).

4.3 Construction plans for the Improvements constructed on the Land will be filed with the City, which shall be deemed to be incorporated by reference herein and made a part hereof for all purposes.

4.4 CS Lancaster agrees to maintain or cause to be maintained, the Improvements during the term of this Agreement in accordance with all applicable state and local laws, codes, and regulations. CS Lancaster agrees that the Improvements shall be used only as an industrial building or another use allowed by the Lancaster Development Code for a period of seven (7) years commencing on the date the final certificate of occupancy is issued for the Building.

4.5 The City, its agents and employees shall have the right of access to the Premises during construction to inspect the Improvements at reasonable times and with reasonable notice to CS Lancaster, and in accordance with CS Lancaster's visitor access and security policies, in order to

insure that the construction of the Improvements are in accordance with this Agreement and all applicable state and local laws and regulations (or valid waiver thereof).

4.6 CS Lancaster agrees to remain a City utilities customer for water, sewer and storm water, and to pay or cause to be paid, all City utility invoices and bills for the period of the abatement.

4.7 The City in connection with the development of this property will waive the payment of all road impact fees by CS Lancaster provided that, during the term of the tax abatement, CS Lancaster or any successor pay the costs and expenses for the construction of any necessary improvements and expansions of West Road to accommodate increased traffic on the roadway or the construction of any new roadways to serve the Premises, as mutually determined by the parties. All road improvements and expansions must comply with City of Lancaster construction and material requirements. Additionally, CS Lancaster must lay the water and sewer lines for connection to the City's water services to the Premises.

4.8 The Improvements are anticipated to result in at least 10 positions of employment at the Premises.

#### **Article V** **Default: Recapture of Tax Revenue**

5.1 In the event CS Lancaster: (i) fails to cause Completion of Construction of the Improvements in accordance with this Agreement or in accordance with applicable State or local laws, codes or regulations; (ii) has delinquent ad valorem or sales taxes owed to the City (provided CS Lancaster retains its right to timely and properly protest such taxes or assessment); (iii) has an "Event of Bankruptcy or Insolvency"; or (iv) breaches any of the terms and conditions of this Agreement subject to reasonable notice and cure, then CS Lancaster after the expiration of the notice and cure periods described below, shall be in default of this Agreement. As liquidated damages in the event of such default, CS Lancaster shall, within sixty (60) days after demand, pay to the City all taxes which otherwise would have been paid by CS Lancaster to the City without benefit of a tax abatement for the Improvements, with interest at the statutory rate for delinquent taxes as determined by Section 33.01 of the Tax Code as amended but without penalty. The parties acknowledge that actual damages in the event of default termination would be speculative and difficult to determine. The parties further agree that any abated tax, including interest as a result of this Agreement, shall be recoverable against CS Lancaster, its successors and assigns and shall constitute a tax lien against the Premises, and shall become due, owing and shall be paid to the City within sixty (60) days after termination.

5.2 Upon breach by CS Lancaster of any obligations under this Agreement, the City shall notify the CS Lancaster in writing, who shall have thirty (30) days from receipt of the notice in which to cure any such default. If the default cannot reasonably be cured within a thirty (30) day period, and CS Lancaster has diligently pursued such remedies as shall be reasonably necessary to cure such default, then the City shall extend the period in which the default must be cured for no more than an additional ninety (90) days.

5.3 If CS Lancaster fails to cure the default within the time provided as specified above or, as such time period may be extended, then the City at its sole option shall have the right to terminate this Agreement, by prior written notice to CS Lancaster.

5.4 If any representation made by CS Lancaster in the application for Tax Abatement or in any periodic report to the taxing jurisdictions is false or misleading in any material respect, the City may terminate this Agreement.

5.5 Upon termination of this Agreement by City, all tax abated as a result of this Agreement shall become a debt to the City as liquidated damages, and shall become due and payable not later than sixty (60) days after a notice of termination is made. The City shall have all remedies for the collection of the abated tax provided generally in the Tax Code for the collection of delinquent property tax. The City at its sole discretion has the option to provide a repayment schedule. The computation of the abated tax for the purposes of the Agreement shall be based upon the full Taxable Value of the Improvements, without tax abatement for the years in which tax abatement hereunder was received by the CS Lancaster, as determined by the Appraisal District, multiplied by the tax rate of the years in question, as calculated by the City Tax Assessor-Collector. The liquidated damages shall incur penalties as provided for delinquent taxes and shall commence to accrue after expiration of the sixty (60) day payment period. The City's sole remedy against CS Lancaster shall be the recovery of the liquidated damages and the enforcement of the tax lien against the Land and Improvements.

#### **Article VI Annual Application for Tax Exemption**

It shall be the responsibility of CS Lancaster pursuant to the Tax Code, to file an annual exemption application form with the Chief Appraiser for each Appraisal District in which the eligible taxable property has situs. A copy of the exemption application shall be submitted to the City upon request.

#### **Article VII Annual Rendition**

CS Lancaster shall annually render the value of the Improvements to the Appraisal District and provide a copy of the same to the City upon written request.

#### **Article VIII Miscellaneous**

8.1 **Notice.** 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 or overnight delivery:

If intended for CS Lancaster, to:

Attn: Robert Rice,  
Regional Vice President  
CS LANCASTER LLC  
3030 LBJ Freeway, Suite 1475  
Dallas, Texas 75234

With a copy to:

Craig Anderson  
DLA Piper US LLP  
1717 Main Street Suite 4600  
Dallas, Texas 75201

If intended for City, to:

Attn: Rickey Childers, City Manager  
CITY OF LANCASTER, TEXAS  
P.O. Box 940  
211 North Henry Street  
Lancaster, Texas 75146

With a copy to:

Robert Hager  
NICHOLS, JACKSON, DILLARD, HAGER &  
SMITH, L.L.P.  
1800 Lincoln Plaza  
500 N. Akard  
Dallas, Texas 75201

8.2 Authorization. This Agreement was authorized by resolution of the City Council approved by its Council meeting authorizing the Mayor to execute this Agreement on behalf of the City.

8.3 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 stand, shall be enforceable and shall be read as if the parties intended at all times to delete said invalid section, subsection, paragraph, sentence, phrase or word.

8.4 Governing 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. The parties agree to submit to the personal and subject matter jurisdiction of said court.

8.5 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.

8.6 Entire Agreement. This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements 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.

8.7 Recordation. A certified copy of this Agreement shall be recorded by the City, at no cost to CS Lancaster, in the Deed Records of Dallas County, Texas.

8.8 **Recitals.** The determinations recited and declared in the preambles to this Agreement are hereby incorporated herein as part of this Agreement.

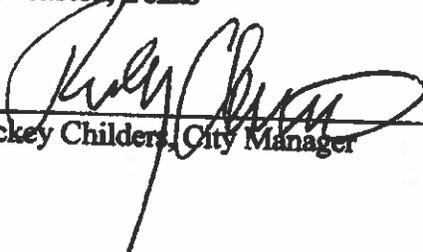
8.9 **Exhibits.** All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

8.10 **Assignment.** 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 and shall run with the Land and future owners of the Land. This Agreement may not be assigned without the prior written approval of the City Manager which approval shall not be unreasonably withheld, conditioned or delayed.

EXECUTED in duplicate originals the 14<sup>th</sup> day of April, 2009.

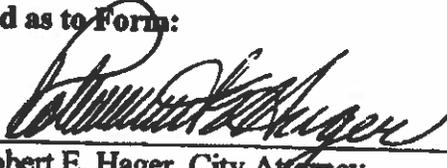
City of Lancaster, Texas

By: \_\_\_\_\_

  
Rickey Childers, City Manager

Agreed as to Form:

By: \_\_\_\_\_

  
Robert E. Hager, City Attorney

EXECUTED in duplicate originals the 18<sup>th</sup> day of June, 2009.

CS Lancaster LLC,  
a Georgia Limited Liability Company

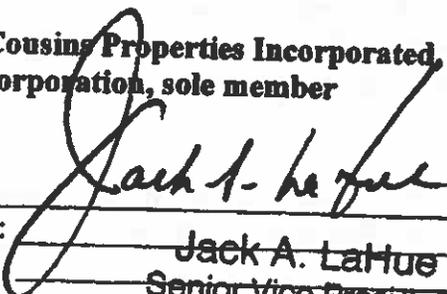
By: CP Texas Industrial LLC,  
a Georgia Limited Liability Company,  
its managing member

By: Cousins Properties Incorporated, a Georgia  
corporation, sole member

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

  
Jack A. Lattue  
Senior Vice President

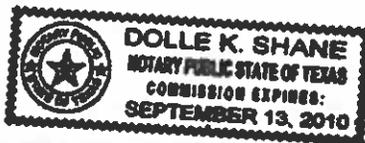
**City's Acknowledgment**

State of Texas §  
County of Dallas §

This instrument was acknowledged Before Me on the 14<sup>th</sup> day of April, 2009, By Rickey Childers, City Manager for the City of Lancaster, Texas, a Texas municipality, on behalf of said municipality.

Dolle K. Shane  
Notary Public, State of Texas

My Commission Expires:  
9-13 2010



**CS Lancaster's Acknowledgment**

State of ~~Texas~~ Georgia §  
County of Fulton §

This instrument was acknowledged Before Me on the 18<sup>th</sup> day of June, 2009, by Jack A. Lattue, Senior Vice President on behalf of CS Lancaster LLC, a Georgia limited liability company, on behalf of said company.

Alinna Kerr  
Notary Public, State of ~~Texas~~ Georgia

My Commission Expires:  
7-16-12



## Exhibit A

### DESCRIPTION OF PROPERTY SURVEYED

**DESCRIPTION**, of a 47.152 acre tract of land situated in the William Howerton Survey, Abstract No. 559, Dallas County, Texas; said tract being part of a tract of land described in a deed to Irving Klein recorded in Volume 69006, Page 400 of the Deed Records of Dallas County, Texas; said 47.152 acre tract being more particularly described as follows:

**BEGINNING**, at a 1/2-inch iron rod with "Pacheco Koch" cap set for corner at the southwest end of a right-of-way corner clip at the intersection of the easterly right-of-way line of Interstate Highway 35E (a 280-foot wide right-of-way) and the south right-of-way line of West Drive (an 80-foot wide right-of-way) as described in a Special Warranty Deed to the City of Lancaster recorded in Volume 2003241, Page 5837 of said Deed Records; said point also being in the westerly line of said Klein tract;

**THENCE**, North 43 degrees, 42 minutes, 19 seconds East, along said corner clip, a distance of 50.64 feet to a 1/2-inch iron rod with "Pacheco Koch" cap set for corner; said point being the northeast end of said corner clip and in the said southerly line of West Drive;

**THENCE**, departing said corner clip and along the said southerly line of West Drive, the following three (3) calls:

North 89 degrees, 00 minutes, 49 seconds East, a distance of 1,212.00 feet to a 1/2-inch iron rod with "Pacheco Koch" cap set for corner; said point being the beginning of a tangent curve to the right;

In a southeasterly direction, along said curve to the right, having a central angle of 10 degrees, 54 minutes, 09 seconds, a radius of 800.00 feet, a chord bearing and distance of South 85 degrees, 32 minutes, 07 seconds East, 162.00 feet, an arc distance of 162.23 feet to a 1/2-inch iron rod with "Pacheco Koch" cap set at the end of said curve;

South 80 degrees, 05 minutes, 02 seconds East, a distance of 307.19 feet to a 1/2-inch iron rod with "Pacheco Koch" cap set for corner in the east line of said Klein tract; said point also being in the west line of a tract of land described in Warranty Deed to Dallas County Schools recorded in Volume 98090, Page 2691 of said Deed Records;

**THENCE**, South 01 degree, 23 minutes, 40 seconds East, along the line of said Irving Klein and Dallas County Schools tracts, passing at a distance of 930.44 feet the northwest corner of a tract of land described in a General Warranty Deed to Blue Bell Operating, L.P. recorded in Volume 2001040, Page 830 of said Deed Records, and continuing for a total distance of 1140.02 feet to a 3/4-inch iron pipe found for corner in the west line of said Blue Bell tract; said point also being the southwest corner of said Klein tract and the northeast corner of Brownlee Park Addition No. 2, an addition to the City of Lancaster recorded in Volume 16, Page 357 of the Map Records of said County;

**THENCE**, South 88 degrees, 38 minutes, 58 seconds West, along the north line of said Brownlee Park Addition No. 2, passing at a distance of 1695.63 feet the northwest corner of said Brownlee Park No. 2 Addition, and continuing for a total distance of 1696.10 feet to a 1/2-inch iron rod with "Pacheco Koch" cap set for corner in the said east line of Interstate Highway 35E; said point also being the southwest corner of said Klein tract;

**THENCE**, North 01 degrees, 35 minutes, 45 seconds West, along the said east line of Interstate Highway 35E and the west line of said Klein tract, a distance of 1,187.39 feet to the POINT OF BEGINNING;

CONTAINING 2 053 930 square feet or 47 152 acres of and more or less