



CITY OF LANCASTER
SHINING STAR OF TEXAS

City Secretary's Office
Date: December 20, 2018

Sent Via: CMRR 7011 2000 0001 9873 8074

PME Oakmont Lancaster, LLC
c/o Oakmont Industrial Group
Attn: Stephen L. Nelsen
3520 Piedmont Road, Ste. 100
Atlanta, GA 30305

RE: LEDC Resolution 2018-02 and City Council 2018-11-90

Dear Mr. Nelsen,

Please be advised that the Lancaster Economic Development Corporation and the Lancaster City Council passed and approved the above mention.

Upon receipt and signing by the appropriate individual(s)/representative(s), please retain the resolutions and return the agreements (2) along with their attachments to Angie Arenas, City Secretary, 211 N. Henry Street, PO Box 940, Lancaster, TX, 75146.

If you have any questions, please do not hesitate to contact me accordingly.

Regards,

Mayra A. Ortiz,
Deputy City Secretary

Enclosure(s):

- (1) Resolution 2018-11-90 (Retain);
- (1) Resolution 2018-02 (Retain);
- (1) Agreement to 2018-11-90 (Return); and
- (1) Agreement to 2018-02 (Return)

P.O. Box 940 | Lancaster | Texas | 75146 | 972.218.1310 | www.lancaster-tx.com



RESOLUTION NO. 2018-02

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

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

WHEREAS, PME Oakmont Lancaster, LLC has selected Lancaster as the location for their newest facility; and

WHEREAS, PME Oakmont Lancaster, LLC has requested a grant for reimbursement of City-related development fees for the development of the Property, construction of the Facility and for Facility Operations not to exceed \$40,000 and infrastructure costs actually incurred and paid for the development of the Property and construction of the Facility not to exceed \$30,000; and

WHEREAS, the Board of Directors of LEDC are responsible for the review and evaluation of Type A Incentive applications; and

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

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

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

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

DULY PASSED and approved by the Board of Directors of the Lancaster Economic Development Corporation of the City of Lancaster, Texas, on this the 1st of November, 2018.

ATTEST:



Mayra A. Ortiz, Board Secretary

APPROVED:



Ted Burk, President

APPROVED AS TO FORM:



David T. Ritter, City Attorney

PERFORMANCE AGREEMENT

This PERFORMANCE AGREEMENT by and between *PME OAKMONT LANCASTER, LLC* a Delaware limited liability company, (hereinafter referred to as "Developer"), and the *LANCASTER ECONOMIC DEVELOPMENT CORPORATION*, a Texas non-profit corporation (hereinafter referred to as the "LEDC"), is made and executed on the following recitals, terms and conditions.

WHEREAS, LEDC is a Type A economic development corporation operating pursuant to Chapter 504 of the Texas Local Government Code, as amended (also referred to as the "Act"), and the Texas Non-Profit Corporation Act, as codified in the Texas Business Organizations Code, as amended; and

WHEREAS, Section 501.101 of the Texas Local Government Code, in pertinent part, defines the term "project" to mean "land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements that are: (1) for the creation or retention of primary jobs; and (2) found by the board of directors to be required or suitable for the development, retention, or expansion of: (A) manufacturing and industrial facilities; (B) research and development facilities; (C) military facilities, including closed or realigned military bases; . . . (F) recycling facilities; . . . (I) distribution centers; (J) small warehouse facilities capable of serving as decentralized storage and distribution centers; (K) primary job training facilities for use by institutions of higher education; or (L) regional or national corporate headquarters facilities"; and

WHEREAS, Section 501.103 of the Texas Local Government Code, in pertinent part, defines the term "project" to mean "expenditures that are found by the board of directors to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises, limited to: (1) streets and roads, rail spurs, water and sewer utilities, electric utilities, or gas utilities, drainage, site improvements, and related improvements; (2) telecommunications and Internet improvements . . ."; and

WHEREAS, Section 501.158 of the Texas Local Government Code prohibits the provision of a direct incentive unless LEDC enters into an Agreement with Developer providing at a minimum a schedule of additional payroll or jobs to be created or retained by LEDC's investment; a schedule of capital investments to be made as consideration for any direct incentives provided by LEDC to Developer; and a provision specifying the terms and conditions upon which repayment must be made should Developer fail to meet the agreed to performance requirements specified in this Agreement; and

WHEREAS, Developer has applied to LEDC for financial assistance necessary to occupy and commence operations at its spec building to be constructed within the city limits of the City of Lancaster, Texas; ("the Facility") on real property owned by the Developer ("the Property") and

WHEREAS, the LEDC's Board of Directors have determined the financial assistance provided to Developer for Facility operations located on the Property is consistent with and

meets the definition of "project" as that term is defined in Sections 501.101 and 501.103 of the Texas Local Government Code; and the definition of "cost" as that term is defined by Section 501.152 of the Texas Local Government Code; and

WHEREAS, Developer agrees and understands that Section 501.073(a) of the Texas Local Government Code requires the City Council of the City of Lancaster, Texas, to approve all programs and expenditures of LEDC, and accordingly this Agreement is not effective until City Council has approved this Agreement at a City Council meeting called and held for that purpose.

NOW, THEREFORE, for and in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, LEDC and Developer agree as follows:

SECTION 1. FINDINGS INCORPORATED.

The foregoing recitals are hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration and promises that bind the parties.

SECTION 2. TERM.

This Agreement shall be effective as of the Effective Date, as defined herein, and shall continue thereafter until November 5, 2022, unless terminated sooner under the provisions hereof.

SECTION 3. DEFINITIONS.

The following words shall have the following meanings when used in this Agreement.

- (a) **Act.** The word "Act" means Chapters 501 to 505 of the Texas Local Government Code, as amended.
- (b) **Agreement.** The word "Agreement" means this Performance Agreement, together with all exhibits and schedules attached to this Performance Agreement from time to time, if any.
- (c) **Approved Assignee.** The words "Approved Assignee" means any of the following persons or any affiliate thereof:
 - (i) Any savings bank, savings and loan association, commercial bank, or trust company having shareholder equity (as determined in accordance with GAAP accounting) of at least \$50,000,000;
 - (ii) Any college, university, credit union, trust or insurance company having assets of at least \$50,000,000;

- (iii) Any employment benefit plan subject to ERISA having assets held in trust of \$50,000,000 or more;
 - (iv) Any pension plan established for the benefit of the employees of any state or local government, or any governmental authority, having assets of at least \$50,000,000;
 - (v) Any real estate or private equity fund or similar institutional investor having committed capital of \$50,000,000 or more; or
 - (vi) Any entity taxed as a real estate investment trust having shareholder equity (or its equivalent for non-corporate entities) of at least \$50,000,000.
- (d) **Certificate of Occupancy.** The words "Certificate of Occupancy" mean a certificate of occupancy (or its local equivalent) for the shell improvements at the Facility.
- (e) **City.** The word "City" means the City of Lancaster, Texas, a Texas home-rule municipality, whose address for the purposes of this Agreement is 211 N. Henry Street, Lancaster, Texas 75146.
- (f) **Developer.** The word "Developer" means PME OAKMONT LANCASTER, LLC a Delaware limited liability company, its successors and assigns, whose address for the purposes of this Agreement is 3520 Piedmont Road, Ste. 100, Atlanta, GA 30305.
- (g) **Effective Date.** The words "Effective Date" mean the date of the latter to execute this Agreement by and between the Developer and LEDC, following approval by their respective Council and Board.
- (h) **Event of Default.** The words "Event of Default" mean and include any of the Events of Default set forth below in the section entitled "Events of Default."
- (i) **Facility.** The word Facility means the spec building to be constructed on the Property. The Facility shall be a minimum 600,000 square foot warehouse located on the Property, as described and/or depicted in *Exhibit B* of this Agreement, which is attached hereto and incorporated herein for all purposes. In order to qualify as the "Facility" under this Agreement, the facility must meet all of the following criteria: (1) be located within the City; and (2) construction of the Facility must be completed and a Certificate of Occupancy obtained within thirty (30) months from the Effective Date of the Agreement.
- (j) **LEDC.** The word "LEDC" means the Lancaster Economic Development Corporation, a Texas non-profit corporation, its successors and assigns, whose corporate address for the purposes of this Agreement is P.O. Box 940, Lancaster, Texas 75146.

- (k) **Operate the Facility.** The words "Operate the Facility" mean to construct, alter, maintain, repair, manage and actively seek tenants for any unoccupied space at the Facility.
- (l) **Property.** The word "Property" means the approximately 42.79 acre tract or tracts of land in the William Howerton Survey, Abstract No. 559, City of Lancaster, Dallas County, Texas, as generally described and/or depicted in *Exhibit A* of this Agreement, which is attached hereto and incorporated herein for all purposes, together with any other adjacent land owned or hereafter acquired by Developer.
- (m) **Term.** The word "Term" means the term of this Agreement as specified in Section 2 of this Agreement.

SECTION 4. AFFIRMATIVE COVENANTS OF DEVELOPER.

Developer covenants and agrees with LEDC that, while this Agreement is in effect, it shall comply with the following terms and conditions:

- (a) **Occupation of Facility.** Developer covenants and agrees to occupy (or commence leasing activities at) the Facility within twenty-four (24) months of the Effective Date of this Agreement.
- (b) **Certificate of Occupancy.** Developer covenants and agrees to obtain or cause to be obtained a Certificate of Occupancy from the City for the Facility located on the Property within thirty (30) months of the Effective Date of this Agreement.
- (c) **Operation of Facility.** Developer covenants and agrees to maintain and actively Operate the Facility located on the Property beginning within twenty-four (24) months of the Effective Date of this Agreement and during the remainder of the Term of this Agreement. Should Assignment of this Agreement be approved by City pursuant to the terms of Section 10(c) or there is an assignment to an Approved Assignee, Operation of the Facility by the Assignee shall be treated as equivalent to operation by Developer.
- (d) **Payment of City Fees.** Developer covenants and agrees to pay to the City all City-related development fees for the development of the Property, construction of the Facility and for Facility Operations. Those fees include (but may not be limited to) the following: special use permit fees, building permit fees, sign permit fees, plan review fees, plumbing, heating and electrical permit fees, grading permit fees, architectural review fees, variance application fee, and zoning change fee. Further, Developer covenants and agrees to submit to the LEDC invoices, receipts, or other documentation indicating the amount of City-related development fees paid for the development of the Property in a reimbursable amount (as defined below in Section 5(a)) not to exceed Forty Thousand and No/100 Dollars (\$40,000.00), by November 5, 2022.

- (e) **Definition of and Documentation of Infrastructure Costs.** Developer covenants and agrees to obtain accurate invoices, receipts, and other written documentation regarding the amount of infrastructure costs actually incurred and paid for the development of the Property and construction of the Facility. Those costs include the following: actual paid and incurred costs for street, sewer and water improvements to the Property in support of the Facility. Further Developer covenants and agrees to submit to the LEDC invoices, receipts, or other documentation indicating the amount of City-related development fees paid for the development of the Property in a reimbursable amount (as defined below in Section 5(b)) not to exceed **Thirty Thousand and No/100 Dollars (\$30,000.00)**, by **November 5, 2022**.
- (f) **Performance.** Developer agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements by and between Developer and LEDC.

SECTION 5. AFFIRMATIVE COVENANTS OF LEDC.

LEDC covenants and agrees with the Developer that, while this Agreement is in effect, it shall comply with the following terms and conditions:

- (a) **Reimbursement for Payment of City Fees.** LEDC covenants and agrees within thirty (30) days of receipt of Developer's invoices, receipts, and other documentation indicating the amount of City-related development fees paid in accordance with Section 4(d) of this Agreement and submitted no later than November 5, 2022, that LEDC will reimburse Developer for fifty percent (50%) of cost of City fees actually incurred and paid, up to a maximum amount of **Forty Thousand and No/100 Dollars (\$40,000.00)**.
- (b) **Reimbursement for Infrastructure Costs.** LEDC covenants and agrees within thirty (30) days of receipt of Developer's invoices, receipts, and other documentation indicating the amount of infrastructure costs paid in accordance with Section 4(e) of this Agreement and submitted no later than November 5, 2022, that LEDC will reimburse Developer for all infrastructure costs for the Property and/or Facility actually incurred and paid, up to a maximum amount of **Thirty Thousand and no/100 Dollars (\$30,000.00)**.
- (c) **Maximum LEDC Payment under this Agreement.** The Parties agree that, notwithstanding anything to the contrary in this Agreement or any other Agreement involving the Facility and/or Property, LEDC's maximum payment to Developer (provided all conditions precedent to payment set forth herein are met) shall be **Seventy Thousand and no/100 Dollars. (\$70,000.00)**.

SECTION 6. CESSATION OF ADVANCES.

If LEDC has made any commitment to make any advance of financial assistance to Developer, whether under this Agreement or under any other agreement, LEDC shall have no

obligation to advance or disburse any financial assistance if: (i) Developer becomes insolvent, files a petition in bankruptcy or similar proceedings, or is adjudged bankrupt; or (ii) an Event of Default occurs and is not cured within the time period provided in Section 8.

SECTION 7. EVENTS OF DEFAULT.

Each of the following shall constitute an Event of Default under this Agreement:

- (a) **General Event of Default.** Failure of Developer or LEDC to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement, or failure of Developer or LEDC to comply with or to perform any other term, obligation, covenant or condition contained in any other agreement by and between Developer and LEDC is an Event of Default. Notwithstanding anything herein to the contrary, should Developer cease to operate the Facility during the time period set forth in Section 4(c), *supra*, this shall not be deemed a Default, and City shall not be entitled to any repayment of City Fee or Infrastructure payments.
- (b) **False Statements.** Any warranty, representation, or statement made or furnished to the LEDC by or on behalf of Developer under this Agreement that is false or misleading in any material respect, either now or at the time made or furnished is an Event of Default.
- (c) **Insolvency.** Developer's insolvency, appointment of receiver for any part of Developer's property, any assignment for the benefit of creditors of Developer, any type of creditor workout for Developer, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Developer is an Event of Default.
- (d) **Ad Valorem Taxes.** Developer allows its ad valorem taxes owed to the City to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of such taxes and to cure such failure within thirty (30) days after written notice thereof from LEDC and/or Dallas County Tax Office is an Event of Default.

SECTION 8. EFFECT OF AN EVENT OF DEFAULT.

In the event of default under Section 7 of this Agreement, the non-defaulting party shall give written notice to the other party of any default, and the defaulting party shall have thirty (30) days to cure a monetary default and ninety (90) days to cure a non-monetary default. Should said default remain uncured as of the last day of the applicable cure period, and the non-defaulting party is not otherwise in default, the non-defaulting party shall have the right to immediately terminate this Agreement, enforce specific performance as appropriate, or maintain a cause of action for damages caused by the event(s) of default. In the event, Developer defaults and is unable or unwilling to cure said default within the prescribed time period, the amounts provided by LEDC to Developer pursuant to Section 5 of this Agreement shall become immediately due and payable by Developer to the LEDC.

SECTION 9. INDEMNIFICATION.

TO THE EXTENT ALLOWED BY LAW, EACH PARTY AGREES TO RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE OTHER (AND ITS OFFICERS, AGENTS, AND EMPLOYEES) FROM AND AGAINST ALL CLAIMS OR CAUSES OF ACTION FOR INJURIES (INCLUDING DEATH), PROPERTY DAMAGES (INCLUDING LOSS OF USE), AND ANY OTHER LOSSES, DEMAND, SUITS, JUDGMENTS AND COSTS, INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES, IN ANY WAY ARISING OUT OF, RELATED TO OR RESULTING FROM ITS PERFORMANCE UNDER THIS AGREEMENT, OR CAUSED BY ITS NEGLIGENT ACTS OR OMISSIONS (OR THOSE OF ITS RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, OR ANY OTHER THIRD PARTIES FOR WHOM IT IS LEGALLY RESPONSIBLE) IN CONNECTION WITH PERFORMING THIS AGREEMENT.

SECTION 10. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

- (a) **Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.
- (b) **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Dallas County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts or federal courts for Dallas County, Texas.
- (c) **Assignment.** This Agreement may not be assigned without the express written consent of the other party, with the exceptions of an assignment from Developer to a Lender for initial project funding and an assignment to an Approved Assignee. A copy of any such assignment shall be provided to City within thirty (30) days of execution. Should consent be withheld by the City, Developer may terminate this Agreement upon written notice to the City. Notwithstanding anything herein to the contrary, upon such Notice from Developer, such termination shall not be deemed a Default under this Agreement.
- (d) **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. Developer warrants and represents that the individual or individuals executing this Agreement on behalf of Developer has full authority to execute this Agreement and bind Developer to the same. LEDC warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind it to the same.

limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Agreement in all other respects shall remain valid and enforceable.

- (j) **Time is of the Essence.** Time is of the essence in the performance of this Agreement.
- (k) **Undocumented Workers.** Developer certifies that the Developer does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended. If during the Term of this Agreement, Developer is convicted of a violation under 8 U.S.C. § 1324a(f), Developer shall repay the amount of the public subsidy provided under this Agreement plus interest, at the rate of six percent (6%), not later than the 120th day after the date LEDC notifies Developer of the violation.
- (l) In accordance with Section 2270.002 of the Texas Government Code (as added by Tex. H.B. 89, 85th Leg., R.S. (2017)), the Developer verifies that it does not boycott Israel and will not boycott Israel during the Term of this Agreement.
- (m) In accordance with Section 2252.152 of the Texas Government Code (as added by Tex. S.B. 252, 85th Leg., R.S. (2017)), the Parties covenant and agree that Developer is not on a list maintained by the State Comptroller's office prepared and maintained pursuant to Section 806.051, 807.051, or 2252.153 of the Texas Government Code.
- (n) **Estoppel Certificate.** Upon written request by Developer to LEDC, LEDC will provide Developer with a certificate stating, as of the date of the certificate, (i) whether this Agreement is in full force and effect and, if Developer is in breach of this Agreement, the nature of the breach, and (ii) a statement as to whether this Agreement has been amended and, if so, the identity and substance of each amendment.

[The Remainder of this Page Intentionally Left Blank]

DEVELOPER ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS PERFORMANCE AGREEMENT, AND DEVELOPER AGREES TO ITS TERMS. THIS PERFORMANCE AGREEMENT IS EFFECTIVE AS OF THE EFFECTIVE DATE AS DEFINED HEREIN.

DEVELOPER:

PME OAKMONT LANCASTER, LLC
a Delaware limited liability company ,

By: _____
Name: _____
Title: _____
Date Signed: _____



STATE OF TEXAS
COUNTY OF _____

§
§
§

This instrument was acknowledged before me on the _____ day of November, 2018, by _____, _____ of _____, a Texas _____, on behalf of said Texas _____.

Notary Public, State of Texas



LEDC:

**LANCASTER ECONOMIC
DEVELOPMENT CORPORATION,**
a Texas non-profit corporation

By: Ted Burk
Name: Ted Burk
Title: President
Date Signed: November 1, 2018

ATTEST:

Mayra A. Ortiz
Mayra A. Ortiz, Board Secretary

STATE OF TEXAS

§
§
§

COUNTY OF DALLAS

This instrument was acknowledged before me on the 1st day of November, 2018, by Ted Burk, President of the Lancaster Economic Development Corporation, a Texas non-profit corporation, on behalf of said Texas corporation.

Deborah Shelby Bunton
Notary Public, State of Texas

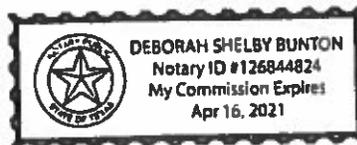


Exhibit A

[Legal Description and/or Depiction of Property]

Exhibit B

[Facility – Site Plan]

RESOLUTION NO. 2018-11-90

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, APPROVING A CHAPTER 380 AGREEMENT BY AND BETWEEN THE CITY OF LANCASTER, TEXAS, AND PME OAKMONT LANCASTER, LLC, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Lancaster, Texas, ("City") desires to grant certain incentives to PME Oakmont Lancaster, LLC, for the purpose of purchasing approximately 41.6 acres on 2900 West Drive, Lancaster, TX 75134 to construct a warehouse distribution facility totaling approximately six hundred thousand (600,000) square feet for operations as a speculative building; and

WHEREAS, the City has adopted programs for promoting economic development, and an Economic Development Agreement ("Agreement") and the economic development incentives set forth herein are given and provided by the City pursuant to and in accordance with those programs; and

WHEREAS, the City is authorized by Chapter 380 of the Texas Local Government Code to offer incentives in order to promote local economic development by stimulating the local economy; and

WHEREAS, the Agreement containing the terms of the grant of incentives from the City is appropriate.

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

SECTION 1. The City Council of the City of Lancaster, Texas approves a Chapter 380 Economic Development Agreement by and between the City of Lancaster and PME Oakmont Lancaster, LLC.

SECTION 2. The City Council authorizes the City Manager to execute the Economic Development Agreement between the City of Lancaster and PME Oakmont Lancaster, LLC.

SECTION 3. This Resolution shall take effect immediately from and after the date of passage and is provided by law.

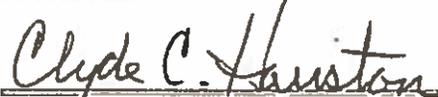
DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 12th day of November, 2018.

ATTEST:



Sorangel O. Arenas, City Secretary

APPROVED:



Clyde C. Hairston, Mayor

APPROVED AS TO FORM:



David T. Ritter, City Attorney

**CITY OF LANCASTER, TEXAS
AND
PME OAKMONT LANCASTER, LLC**

**CHAPTER 380 ECONOMIC DEVELOPMENT
PROGRAM AND AGREEMENT**

This **CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AND AGREEMENT** (hereinafter referred to as the "Agreement") is made and entered into by and between the **CITY OF LANCASTER, TEXAS**, a Texas home-rule municipality (hereinafter referred to as the "City"), and **PME OAKMONT LANCASTER, LLC**, a Delaware limited liability company (hereinafter referred to as the "Developer"), for the purposes and considerations stated below:

WHEREAS, the Developer desires to enter into this Agreement pursuant to Chapter 380 of the Texas Local Government Code; and

WHEREAS, the City desires to provide, pursuant to Chapter 380 of the Texas Local Government Code an incentive to Developer to develop the Property as defined below; and

WHEREAS, the City possesses the legal and statutory authority under Chapter 380 of the Texas Local Government Code to expend public funds for the purposes of promoting local economic development and stimulating business and commercial activity within the City of Lancaster, Texas; and

WHEREAS, the City has determined that a grant of funds to the Developer will serve the public purpose of promoting local economic development, with the development and diversification of the economy of the State and City, will eliminate unemployment and underemployment in the State and City, and will enhance business and commercial activity within the City of Lancaster, Texas; and

WHEREAS, the City has concluded and hereby finds that this Agreement clearly promotes economic development in the City of Lancaster, Texas, and, as such, meets the requisites under Chapter 380 of the Texas Local Government Code, and further, is in the best interests of the City and the Developer; and

WHEREAS, the City has concluded and hereby finds that this Agreement clearly promotes economic development in the City of Lancaster, Texas, and, as such, meets the requirements of Article III, Section 52-a of the Texas Constitution by assisting in the development and diversification of the economy of the State, by eliminating unemployment or underemployment in the State, and by the development or expansion of commerce within the State.

NOW, THEREFORE, for and in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Developer agree as follows:

SECTION 1. FINDINGS INCORPORATED.

The foregoing recitals are hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration and promises that bind the parties.

SECTION 2. TERM.

This Agreement shall be effective as of the Effective Date of this Agreement, as defined herein, and shall continue thereafter for a term of five (5) years after Developer secures a Certificate of Occupancy for the Facility, unless terminated sooner under the provisions hereof.

SECTION 3. DEFINITIONS.

The following words shall have the following meanings when used in this Agreement.

- (a) **Agreement.** The word "Agreement" means this Chapter 380 Economic Development Program and Agreement, authorized by Chapter 380 of the Texas Local Government Code, together with all exhibits and schedules attached to this Agreement from time to time, if any.
- (b) **Approved Assignee.** The words "Approved Assignee" means any of the following persons or any affiliate thereof:
 - (i) Any savings bank, savings and loan association, commercial bank, or trust company having shareholder equity (as determined in accordance with GAAP accounting) of at least \$50,000,000;
 - (ii) Any college, university, credit union, trust or insurance company having assets of at least \$50,000,000;
 - (iii) Any employment benefit plan subject to ERISA having assets held in trust of \$50,000,000 or more;
 - (iv) Any pension plan established for the benefit of the employees of any state or local government, or any governmental authority, having assets of at least \$50,000,000;
 - (v) Any real estate or private equity fund or similar institutional investor having committed capital of \$50,000,000 or more; or
 - (vi) Any entity taxed as a real estate investment trust having shareholder equity (or its equivalent for non-corporate entities) of at least \$50,000,000.

- (c) **Certificate of Occupancy.** The words "Certificate of Occupancy" mean a certificate of occupancy (or its local equivalent) for the improvements at the Facility with a tenant.
- (d) **City.** The word "City" means the City of Lancaster, Texas, a Texas home-rule municipality. For the purposes of this Agreement, City's address is P.O. Box 940, Lancaster, Texas 75146.
- (e) **Developer.** The word "Developer" means PME Oakmont Lancaster, LLC , whose address for the purposes of this Agreement is 3520 Piedmont Road, Ste. 100, Atlanta, GA 30305.
- (f) **Effective Date.** The words "Effective Date" mean the date of the latter to execute this Agreement by and between the City and Developer, following approval by their respective Council and Board.
- (g) **Event of Default.** The words "Event of Default" mean and include any of the Events of Default set forth in the section entitled "Events of Default" in this Agreement.
- (h) **Facility.** The word "Facility" means Developer's spec warehouse building to be constructed on the Property. The Facility is described and/or depicted in *Exhibit B* of this Agreement, which is attached hereto and incorporated herein for all purposes. In order to qualify as the "Facility" under this Agreement, the facility must meet all of the following criteria: (1) be located within the City; and (2) construction of the Facility must be completed and a Certificate of Occupancy obtained within twenty-four (24) months from the Effective Date of the Agreement.
- (i) **Operate the Facility.** The words "Operate the Facility" mean to construct, alter, maintain, repair, manage and have tenants for the Facility.
- (j) **Program Payment.** The words "Program Payment" mean the economic development funds provided by the City to Developer in accordance with this Agreement. Program Payments will be made in the form of tax rebates as described in more detail in Section 5(a) of this Agreement.
- (k) **Property.** The word "Property" means the approximately 42.79 acre tract of land in the William Howerton Survey, Abstract No. 559, City of Lancaster, Dallas County, Texas, as more particularly described and or depicted in *Exhibit A* of this Agreement, which is attached hereto and incorporated herein for all purposes, together with any other adjacent land owned or hereafter acquired by Developer.
- (l) **Term.** The word "Term" means the term of this Agreement as specified in Section 2 of this Agreement.

SECTION 4. AFFIRMATIVE OBLIGATIONS OF DEVELOPER.

The Developer covenants and agrees with City that, while this Agreement is in effect, it shall comply with the following terms and conditions:

- (a) **Occupation of Facility.** Developer covenants and agrees to occupy or commence leasing activities at the Facility within twenty-four (24) months of the Effective Date of this Agreement.
- (b) **Certificate of Occupancy.** Developer covenants and agrees to obtain or cause to be obtained from the City a Certificate of Occupancy for the Facility located on the Property within twenty-four (24) months of the Effective Date of this Agreement.
- (c) **Operation of Facility.** Developer covenants and agrees to maintain and actively Operate the Facility located on the Property beginning within thirty (30) months of the Effective Date of this Agreement and during the remainder of the Term of this Agreement. Should Assignment of this Agreement be approved by City pursuant to the terms of Section 10(c) or there is an assignment to an Approved Assignee, Operation of the Facility by the Assignee shall be treated as equivalent to operation by Developer.
- (d) **Performance.** Developer covenants and agrees to perform and comply with all terms, conditions and provisions set forth in this Agreement, and any other agreements by and between the City and Developer.

SECTION 5. AFFIRMATIVE OBLIGATIONS OF THE CITY.

City covenants and agrees with Developer that, while this Agreement is in effect, it shall comply with the following terms and conditions:

- (a) **Program Payments.**
 - (1) **Real Property Tax.** The City shall make a Program Payment to Developer for the ad valorem taxes paid by the Developer to the City for the Facility and Property (collectively, "Real Property") for a period not to exceed five (5) years. The first year of the Program Payment pursuant to this Section 5(a)(1) of this Agreement shall be the first tax year that begins after the City issues a Certificate of Occupancy for the Developer's Facility located on the Property pursuant to Section 4(b) of this Agreement, and the Real Property is fully assessed by the taxing authorities at a minimum of **Twenty-Two Million and No/100 Dollars (\$22,000,000.00)** The Program Payments shall be based upon the following percentages:

Tax Years 1-5	Percentage of: City Real Property Reimbursed
1 st through 5 th tax year after issuance of Certificate of Occupancy	45%

The City covenants and agrees to provide the Program Payment to Developer within thirty (30) days following receipt of the ad valorem taxes paid to the City for the Real Property. For purposes of these Program Payments, payment to the City's authorized tax collection agent, (currently the Dallas County Tax Assessor/Collector (the "Dallas County Tax Office") shall be considered ad valorem taxes "paid to the City."

- (2) **Valuation of Real Property and Business Personal Property.** The Real Property valuations in Section 5 are Dallas Central Appraisal District ("DCAD") values, including the values assigned by constituent taxing authorities.

SECTION 6. CESSATION OF ADVANCES.

If City has made any commitment to provide any Program Payment to Developer, whether under this Agreement or under any other agreement, the City shall have no obligation to advance or disburse said Program Payment if: (i) Developer becomes insolvent, files a petition in bankruptcy or similar proceedings, or is adjudged bankrupt; or (ii) an Event of Default occurs and is not cured within the time period provided in Section 8.

SECTION 7. EVENTS OF DEFAULT.

Each of the following shall constitute an Event of Default under this Agreement:

- (a) **General Event of Default.** Failure of Developer or City to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement, or failure of Developer or City to comply with or to perform any other term, obligation, covenant or condition contained in any other agreement by and between Developer and City is an Event of Default. Notwithstanding anything herein to the contrary, should Developer cease to Operate the Facility during the time period set forth in Section 4(c), *supra*, this shall be a special Limited Event of Default, and the City's remedy shall be as noted in Section 8, *infra*,
- (b) **False Statements.** Any warranty, representation, or statement made or furnished to the City by or on behalf of Developer under this Agreement that is false or misleading in any material respect, either now or at the time made or furnished is an Event of Default.
- (c) **Insolvency.** Developer's insolvency, appointment of receiver for any part of Developer's property, any assignment for the benefit of creditors of Developer, any type of creditor workout for Developer, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Developer is an Event of Default.

- (d) **Ad Valorem Taxes.** Developer allows its ad valorem taxes owed to the City to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of such taxes and to cure such failure within thirty (30) days after written notice thereof from City and/or Dallas County Central Appraisal District is an Event of Default.

SECTION 8. EFFECT OF AN EVENT OF DEFAULT.

In the event of default under Section 7 of this Agreement, the non-defaulting party shall give written notice to the other party of any default, and the defaulting party shall have thirty (30) days to cure a monetary default and ninety (90) days to cure a non-monetary default. Should said default remain uncured as of the last day of the applicable cure period, the non-defaulting party shall have the right to terminate this Agreement, enforce specific performance as appropriate, or maintain a cause of action for damages caused by the event(s) of default. In the event the Developer defaults and is unable or unwilling to cure said default within the prescribed time period, the Program Payments provided by the City to Developer pursuant to Section 5(a) of this Agreement, shall become immediately due and payable by the Developer to the City. Notwithstanding anything to the contrary herein, should a Limited Event of Default occur (as that term is defined in Section 7(a), *supra*, the City shall not be entitled to any Program Payment refunds, except for Program Payments extended for the single immediately preceding Tax Year or \$85,882.50, whichever is less.

SECTION 9. INDEMNITY.

TO THE EXTENT ALLOWED BY LAW, EACH PARTY AGREES TO RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE OTHER (AND ITS OFFICERS, AGENTS, AND EMPLOYEES) FROM AND AGAINST ALL CLAIMS OR CAUSES OF ACTION FOR INJURIES (INCLUDING DEATH), PROPERTY DAMAGES (INCLUDING LOSS OF USE), AND ANY OTHER LOSSES, DEMAND, SUITS, JUDGMENTS AND COSTS, INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES, IN ANY WAY ARISING OUT OF, RELATED TO OR RESULTING FROM ITS PERFORMANCE UNDER THIS AGREEMENT, OR CAUSED BY ITS NEGLIGENT ACTS OR OMISSIONS (OR THOSE OF ITS RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, OR ANY OTHER THIRD PARTIES FOR WHOM IT IS LEGALLY RESPONSIBLE) IN CONNECTION WITH PERFORMING THIS AGREEMENT.

SECTION 10. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

- (a) **Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

- (b) **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Dallas County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Dallas County, Texas.
- (c) **Assignment.** This Agreement may not be assigned without the express written consent of the other party, with the exceptions of an assignment from Developer to a Lender for initial project funding and an assignment to an Approved Assignee. A copy of any such assignment shall be provided to City within thirty (30) days of execution. Should consent to any other proposed assignment be withheld by the City, Developer may terminate this Agreement upon written notice to City. Notwithstanding anything herein to the contrary, upon such notice from Developer, such termination shall be deemed a Limited Event of Default (as that term is defined in Section 7(a), *supra*), and City shall be entitled to repayment of the lesser of (i) Program Payments extended for the single, immediately preceding Tax Year and (ii) \$85,882.50.
- (d) **Attorneys' Fees and Costs.** In the event of any action at law or in equity between the parties to enforce any of the provisions hereof, to the extent allowed by law any unsuccessful party to such litigation shall pay to the successful party all costs and expenses, including reasonable attorneys' fees (including costs and expenses incurred in connection with all appeals) incurred by the successful party, and these costs, expenses and attorneys' fees may be included in and as part of the judgment. A successful party shall be any party who is entitled to recover its costs of suit, whether or not the suit proceeds to final judgment.
- (e) **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. City warrants and represents that the individual executing this Agreement on behalf of City has full authority to execute this Agreement and bind City to the same. Developer warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind it to the same.
- (f) **Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of the Agreement.
- (g) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- (h) **Entire Agreement.** This written agreement represents the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

- (i) **Force Majeure.** It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, fire or other casualty, or court injunction, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period such party was delayed.
- (j) **No Interpretation Against Drafter.** Developer and City have participated in negotiating and drafting this Agreement, and agree that the Agreement is to be construed as if drafted jointly. The parties agree that the Agreement will not be interpreted or construed against either party should a need for interpretation or resolution of any ambiguity arise.
- (k) **Notices.** Any notice or other communication required or permitted by this Agreement (hereinafter referred to as the "Notice") is effective when in writing and (i) personally delivered either by facsimile (with electronic information and a mailed copy to follow) or by hand or (ii) three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified with return receipt requested. The parties agree to keep the other party or parties informed of their address at all times during the Term of this Agreement. The Notices shall be addressed as follows:

If to the City: City of Lancaster, Texas
 Attn: Opal Mauldin-Jones, City Manager
 211 N. Henry / P.O. Box 940
 Lancaster, Texas 75146
 Telephone: (972) 218-1300

If to the Developer: PME Oakmont Lancaster, LLC
 c/o Oakmont Industrial Group
 3520 Piedmont Road, Ste. 100
 Atlanta, GA 30305
 Attn: Steve Nelsen

- (l) **Severability.** The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement is for any reason held by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation have the force and effect of the law, the remaining portions of the Agreement shall be enforced as if the invalid provision had never been included.
- (m) **Sovereign Immunity.** No party hereto waives any statutory or common law right to sovereign immunity by virtue of its execution hereof.
- (n) **Survival.** All warranties, representations, and covenants made by Developer in this Agreement or in any certificate or other instrument delivered by Developer to City under

this Agreement shall be considered to have been relied upon by the City and will survive the payment of any Program Payments under this Agreement regardless of any investigation made by the City or on City's behalf.

- (o) **Time is of the Essence.** Time is of the essence in the performance of this Agreement.
- (p) **Undocumented Workers.** The Developer certifies that Developer does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended. If during the Term of this Agreement, Developer is convicted of a violation under 8 U.S.C. § 1324a(f), Developer shall repay the amount of any public subsidy provided under this Agreement to Developer plus six percent (6.0%), not later than the 120th day after the date the City notifies Developer of the violation.
- (q) In accordance with Section 2270.002 of the Texas Government Code (as added by Tex. H.B. 89, 85th Leg., R.S. (2017)), the Developer verifies that it does not boycott Israel and will not boycott Israel during the Term of this Agreement.
- (r) In accordance with Section 2252.152 of the Texas Government Code (as added by Tex. S. B. 252, 85th Leg., R.S. (2017)), the Parties covenant and agree that Developer is not on a list maintained by the State Comptroller's office prepared and maintained pursuant to Section 806.051, 807.051, or 2252.153 of the Texas Government Code.
- (s) **Estoppel Certificate.** Upon written request by Developer to the City of Lancaster, the City of Lancaster will provide Developer with a certificate stating, as of the date of the certificate, (i) whether this Agreement is in full force and effect and, if Developer is in breach of this Agreement, the nature of the breach, and (ii) a statement as to whether this Agreement has been amended and, if so, the identity and substance of each amendment.

[The Remainder of this Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed.

CITY:

**CITY OF LANCASTER, TEXAS,
A Texas home-rule municipality**

By: Opal Mauldin-Jones
Opal Mauldin-Jones, City Manager
Date: November 12, 2018

ATTEST:

Sorangel O. Arenas
Sorangel O. Arenas, City Secretary

APPROVED AS TO FORM:

David F. Ritter
David F. Ritter, City Attorney

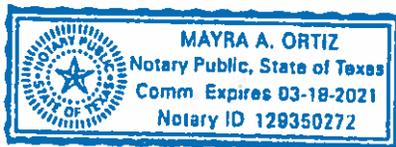
STATE OF TEXAS

COUNTY OF DALLAS

§
§
§

This instrument was acknowledged before me on the 12th day of November, 2018, by Opal Mauldin-Jones, City Manager of the City of Lancaster, Texas, a Texas home-rule municipality, on behalf of said municipality.

Mayra A. Ortiz
Notary Public, State of Texas



DEVELOPER:

**PME OAKMONT LANCASTER, LLC,
A Delaware limited liability company**

Name: _____

Title: _____

Date Signed: _____



STATE OF _____ §

COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2018, by _____, _____ of PME Oakmont Lancaster, LLC a Delaware limited liability company, on behalf of said company.

Notary Public, State of Texas



Exhibit A

**Legal Description and/or Depiction
of the Property**

Exhibit B

Depiction of the Facility

Scale: 1/8" = 1'-0"
 1/4" = 1'-0"
 1/2" = 1'-0"
 3/4" = 1'-0"
 1" = 1'-0"

PROJECT NO. 2015-001
 DATE: 08/11/15

OAKMONT
 2015-001
 803,378 SF
 1111' x 548'

NO. OF SHEETS	1
SHEET NO.	SK-01
TOTAL SHEETS	1

DATE: 08/11/15
 DRAWN BY: [Name]
 CHECKED BY: [Name]

SK-01
 11/15/15

