

RESOLUTION NO. 2021-02-23

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 RW DALLAS MIDPOINT OWNER, LLC AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, RW Dallas Midpoint Owner, LLC seeks to build an industrial/warehouse facility containing approximately 500,000 square feet of space with an anticipated taxable valuation of \$20,000,000 upon completion; and

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

WHEREAS, the City desires to grant certain incentives to RW Dallas Midpoint Owner, LLC for the purpose of constructing a warehousing/distribution facility within the City of Lancaster; and

WHEREAS, the City has adopted programs for promoting economic development, and an Economic Development 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 issue grants 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 Incentive Agreement by and between the City of Lancaster and RW Dallas Midpoint Owner, LLC, attached as Exhibit "A" and incorporated herein.

SECTION 2. The City Council authorizes the City Manager to execute the Chapter 380 Economic Development Program and Agreement between the City of Lancaster and RW Dallas Midpoint Owner, 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 22nd day of February, 2021.

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
RW DALLAS MIDPOINT TOWNER, 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 **RW DALLAS MIDPOINT TOWNER, LLC**, a Georgia 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 until ~~May 30, 2029.~~ *Jan 1, 2029* 

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) **Certificate of Occupancy.** The words “Certificate of Occupancy” mean a certificate of occupancy (or its local equivalent) for the Facility.
- (c) **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. 
- (d) **Developer.** The word “Developer” means RW Dallas Midpoint I Owner, LLC., whose address for the purposes of this Agreement is 3350 Riverwood Parkway, Suite 700, Atlanta, GA 30339.
- (e) **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 management.
- (f) **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.
- (g) **Facility.** The word “Facility” means Developer’s speculative building containing at least 500,000 square feet of warehousing/distribution space constructed on the Property. 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) a Certificate of Occupancy obtained within two (2) years from the Effective Date of the Agreement, or if already obtained, maintained throughout the Term of this Agreement.

- (i) **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.
- (j) **Property.** The word “Property” means Developer’s ± 26.65 acre tract of land located in the City of Lancaster, Dallas County, Texas, commonly known as Smith Elkins Survey, Abstract No. 430 and more particularly described and or depicted in *Exhibit A* of this Agreement, which is attached hereto and incorporated herein for all purposes.
- (k) **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 continue occupying the Facility during the term of this Agreement.
- (b) **Certificate of Occupancy.** Developer covenants and agrees to obtain or maintain a City Certificate of Occupancy for the Facility located on the Property during the term of this Agreement, and no later than January 1, 2024.
- (c) **Operation of Facility.** Developer covenants and agrees to maintain and actively operate the Facility located on the Property during the Term of this Agreement.
- (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, and to stay current with all applicable taxes levied by the Dallas County Tax Assessor.
- (e) **Valuation and Square Footage Minimums.** Developer covenants and agrees that the minimum valuation of the Property and Facility Certificate of Occupancy is granted will be not less than \$20,000,000, as determined by the real property ad valorem taxing authorities the first tax year after the issuance of the Certificate of Occupancy and that the size of the Facility will be not less than 500,000 square feet in “under-roof” size.

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 Program Payments to Developer for the ad valorem taxes paid by the Developer to the City for Real Property Taxes for a period not to exceed five (5) years on the value of Improvements only. 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. In order to qualify for a Program Payment for Real Property Taxes under this Agreement, the Property must be assessed at a minimum of **Twenty Million Dollars (\$20,000,000.00)** for the first tax year after the City issues a Certificate of Occupancy for the Developer's Facility (the "First Year Valuation"). These Program Payments shall be based upon the following percentages and terms:

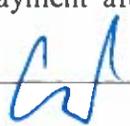
Tax Years 1-5 (as noted above)	Base Percentage of City Real Property Taxes Reimbursed
1st through 5th tax year after issuance of Certificate of Occupancy	45%

In order to be eligible for the Program Payments shown above, Developer must meet all Section 4 obligations.

- (2) The City covenants and agrees to provide each Program Payment to Developer within thirty (30) days following receipt of the ad valorem taxes paid to the City for the Real Property Tax. 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."
- (3) **Valuation of Real Property and Business Personal Property.** The Real Property valuations in Section 4E and this 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 future Program Payment after: (a) Developer becomes insolvent, files a



petition in bankruptcy or similar proceedings, or is adjudged bankrupt; or (b) 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:

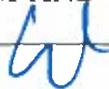
- (a) **General Event of Default.** Failure of Developer or City to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement, or failure of Developer or City to comply with or to perform any other term, obligation, covenant or condition contained in any other agreement by and between Developer and City is an Event of Default.
- (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 said 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.

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. NOTHING HEREIN SHALL BE INTERPRETED AS A WAIVER OF CITY'S GOVERNMENTAL IMMUNITY FROM SUIT OR DAMAGES.

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 prior written permission of City.
- (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 by nationally recognized next business day delivery service 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
P.O. Box 940
Lancaster, Texas 75146
Telephone: (972) 218-1302

If to the Developer: RW Dallas Midpoint I Owner LLC,
Attn: David L. Welch
3350 Riverwood Parkway, Suite 700
Atlanta, GA 30339



- (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 amended by Tex. H.B. 793, 86th Leg., R.S. (2019)), 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 City, City 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.

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THE INCENTIVES IN THIS AGREEMENT SHALL BE NULL AND VOID IF NOT SIGNED BY DEVELOPER AND RETURNED TO THE CITY WITHIN SEVEN (7) WORKING DAYS OF THE DATE LISTED HEREIN: FEBRUARY 22, 2021

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: 2-22-21

ATTEST:

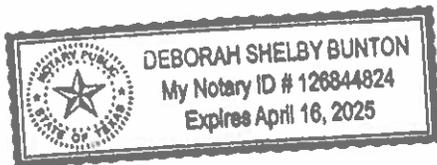
Sorangel O. Arenas
Sorangel O. Arenas, City Secretary

APPROVED AS TO FORM:

David T. Ritter
David T. Ritter, City Attorney

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the 22nd day of February 2021, by Opal Mauldin-Jones, City Manager of the City of Lancaster, Texas, a Texas home-rule municipality, on behalf of said municipality.



Deborah Shelby Bunton
Notary Public, State of Texas

Exhibit A

Legal Description and/or Depiction
of the Property

DESCRIPTION, of a 26.650 acre (1,160,882 square feet) tract of land situated in the Smith Elkins Survey, Abstract No. 430, Dallas County, Texas; said tract being part of that certain tract of land described in General Warranty Deed with Vendor's Lien to White Property Company No. 2, Ltd., recorded in Instrument No. 200600115504, part of that certain tract of land described in a Special Warranty Deed with Vendor's Lien to White Property Company No. 2, Ltd., recorded in Instrument No. 200600115509, and also being part of that certain tract of land described in a General Warranty Deed with Vendor's Lien to White Property Company No. 2 Ltd., recorded in Instrument No. 200600115506 all of the Official Public Records of Dallas County, Texas, said 26.650 acre (1,160,882 square feet) tract being more particularly described as follows:

BEGINNING, at a 1/2-inch iron rod found in the west line of North Dallas Avenue (a variable width right-of-way); said point being the southeast corner of Lot 1A, Block A, of Plat Revision-Lot 1-A-A Replat of Lots 1 and 2, Block A of Cedar Valley Industrial Park, Section One, an Addition to the City of Lancaster, Texas, recorded in Volume 87056, Page 2624 of the Deed Records of Dallas County Texas, said point also being the northeast corner of the said White Property Company No. 2, Ltd. (Instrument No. 200600115504);

THENCE, South 21 degrees, 12 minutes, 31 seconds East, along the said west line of North Dallas Avenue, at a distance of 544.09 passing the southeast corner of said White Property Company No. 2, Ltd. (Instrument No. 200600115504) and the northeast corner of said White Property Company No. 2, Ltd. (Instrument No. 200600115509) and continuing a total distance of 1,055.77 feet to a point for corner;

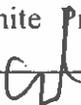
THENCE, departing the said west line of North Dallas Avenue and the east line of said White Property Company No. 2, Ltd. (Instrument No. 200600115509) and into and across said White Property Company No. 2, Ltd. (Instrument No. 20060115509) the following four (4) calls:

South 23 degrees, 47 minutes, 29 seconds West, a distance of 28.28 feet to a point for corner;

South 68 degrees, 47 minutes, 29 seconds West, a distance of 291.86 feet to a point for corner at the beginning of a tangent curve to the left;

Along said tangent curve to the left, having a central angle of 09 degrees, 49 minutes, 45 seconds, a radius of 435.00 feet, a chord bearing and distance of South 63 degrees, 52 minutes, 37 seconds West, 74.53 feet, an arc distance of 74.62 feet to a point for corner at the end of said curve;

South 58 degrees, 57 minutes, 44 seconds West, at a distance of 648.55 feet passing the common line between said White Property Company No. 2, Ltd. (Instrument No.



200600115509) and said White Property Company No. 2, Ltd. (Instrument No. 200600115506), continuing in all a total distance of 652.97 feet to a point for corner;

THENCE, North 75 degrees, 49 minutes, 06 seconds West, a distance of 28.18 feet to a point for corner;

THENCE, North 30 degrees, 35 minutes, 57 seconds West, at a distance of 448.12 feet passing the south line of said White Property Company No. 2, Ltd. (Instrument No. 200600115504) and the north line of said White Property Company No. 2, Ltd. (Instrument No. 200600115506), at a distance of 591.50 feet passing the most southeasterly corner of Midpoint Logistics Center, Midpoint Drive, an addition to the City of Lancaster recorded in Instrument No. 201800137456 of said Official Public Records, then continuing in all a total distance of 984.61 feet to the southwest corner of Lot 5 Block A, of Cedar Valley Industrial Park, Section One, an Addition to the City of Lancaster, recorded in Volume 85082, Page 5110, of the said Deed Records;

THENCE, North 59 degrees, 09 minutes, 33 seconds East, departing the said east line of Midpoint Drive and the west line of White Property Company No. 2, Ltd. (Instrument No. 200600115504) and the southwest corner of said Lot 5, a distance of 1,230.47 feet to the **POINT OF BEGINNING**;

CONTAINING: 26.650 acres or 1,160,882 square feet of land, more or less.

