



**NOTICE OF REGULAR MEETING AGENDA  
LANCASTER ECONOMIC DEVELOPMENT CORPORATION, TYPE A  
MUNICIPAL CENTER CITY CONFERENCE ROOM  
211 N. HENRY STREET, LANCASTER, TEXAS**



**Thursday, March 22, 2018 - 6:00 PM**

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**CALL TO ORDER**

**ACTION:**

1. Discuss and consider a resolution to approve the terms and conditions of an economic development agreement by and between Global Fulfillment Solutions, Ltd. and the Lancaster Economic Development Corporation (LEDC).

**ADJOURNMENT**

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**EXECUTIVE SESSION:** The Boards and Commissions 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.

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**ACCESSIBILITY STATEMENT:** Meetings of the Boards and Commissions are held in municipal facilities are 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.

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**PURSUANT TO SECTION 30.06 PENAL CODE (TRESPASS BY HOLDER WITH A CONCEALED HANDGUN), A PERSON LICENSED UNDER SUBCHAPTER H, CHAPTER 411, GOVERNMENT CODE (HANDGUN LICENSING LAW), MAY NOT ENTER THIS PROPERTY WITH A CONCEALED HANDGUN.**

**CONFORME A LA SECCION 30.06 DEL CODIGO PENAL (TRASPASAR PORTANDO ARMAS DE FUEGO CON LICENCIA) PERSONAS CON LICENCIA BAJO DEL SUB-CAPITULO 411, CODIGO DEL GOBIERNO (LEY DE PORTAR ARMAS), NO DEBEN ENTRAR A ESTA PROPIEDAD PORTANDO UN ARMA DE FUEGO OCULTADA.**

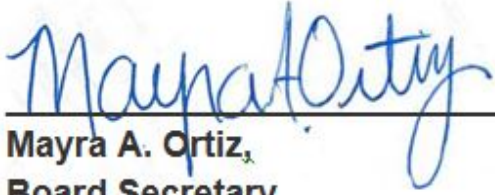
**PURSUANT TO SECTION 30.07 PENAL CODE (TRESPASS BY HOLDER WITH AN OPENLY CARRIED HANDGUN), A PERSON LICENSED UNDER SUBCHAPTER H, CHAPTER 411, GOVERNMENT CODE (HANDGUN LICENSING LAW), MAY NOT ENTER THIS PROPERTY WITH A HANDGUN THAT IS CARRIED OPENLY.**

**CONFORME A LA SECCION 30.07 DEL CODIGO PENAL (TRASPASAR PORTANDO ARMAS DE FUEGO AL AIRE LIBRE CON LICENCIA) PERSONAS CON LICENCIA BAJO DEL SUB-CAPITULO H, CAPITULO 411, CODIGO DE GOBIERNO (LEY DE PORTAR ARMAS), NO DEBEN ENTRAR A ESTA PROPIEDAD PORTANDO UN ARMA DE FUEGO AL AIRE LIBRE.**

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**Certificate**

**I hereby certify the above Notice of Meeting was posted at the Lancaster City Hall on March 19, 2018 @ 5:45 p.m. and copies thereof were provided to the Lancaster Economic Development Corporation board members.**



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**Mayra A. Ortiz,  
Board Secretary**

## CITY OF LANCASTER'S BOARDS AND COMMISSIONS

### Lancaster Economic Development Corporation

1.

**Meeting Date:** 03/22/2018

**Policy Statement:** This request supports the City Council 2017-2018 Policy Agenda

**Goal(s):** Quality Development

**Submitted by:** Shane Shepard, Economic Development Director

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#### **Agenda Caption:**

Discuss and consider a resolution to approve the terms and conditions of an economic development agreement by and between Global Fulfillment Solutions, Ltd. and the Lancaster Economic Development Corporation (LEDC).

#### **Background:**

Global Longhorn Center, LP has purchased property in Lancaster, Texas with the intent of constructing a 400,000 square foot eCommerce fulfillment and distribution facility. Global Longhorn Center, LP received a Letter of Intent from Global Fulfillment Solutions, LTD. Global Longhorn Center, LP estimates the value of the building will be \$20,000,000 and Global Fulfillment Solutions estimates it will create 60 new full-time jobs.

Staff entered into incentive discussion with Global Fulfillment Solutions prior to them selecting Lancaster for their operation. The company applied for an incentive grant from the Lancaster Economic Development Corporation (LEDC) in an amount not to exceed \$69,000. The grant includes the following incentives:

1. Up to \$24,000 reimbursement grant for hiring Lancaster residents (\$400 per job up to 60 jobs), if the aggregate average salary is more than thirty-thousand (\$30,000) per annum; OR up to \$18,000 reimbursement grant for hiring Lancaster residents (\$300 per job up to 60 jobs), if the aggregate average salary is less than thirty-thousand (\$30,000) per annum;
2. \$10,000 grant to assist in job training at Cedar Valley College;
3. \$25,000 for development costs and fees if aggregate average wage is below thirty-thousand (\$30,000) per annum OR \$35,000 for development costs and fee if aggregate average wage is more than thirty-thousand (\$30,000).

#### **Operational Considerations:**

Global Fulfillment Solutions will submit to the Lancaster Economic Development Corporation (LEDC) copies of the City issued Certificate of Occupancy, an annual detailed verification of the incentivized jobs and payrolls, and annual job training assistance incentive report and receipts from Cedar Valley College in order to exercise the grant. Within 60 days of verification of terms, the Lancaster Economic Development Corporation will remit payments.

#### **Legal Considerations:**

The City Attorney has reviewed and approved the resolution and agreement as to form.

**Public Information Considerations:**

This item is being considered at a meeting of the Lancaster Economic Development Corporation (LEDC) noticed and held in accordance with the Texas Open Meetings Act.

**Fiscal Impact:**

The grant total is not to exceed \$69,000 and is within the Lancaster Economic Development Corporation (LEDC) incentive fund.

**Options/Alternatives:**

1. The Lancaster Economic Development Corporation (LEDC) may approve the resolution and agreement as presented.
2. The Lancaster Economic Development Corporation (LEDC) may deny the resolution and agreement.

**Recommendation:**

Staff recommends approval of the resolution and agreement.

**Attachments**

Resolution

Agreement

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## RESOLUTION NO.

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE LANCASTER ECONOMIC DEVELOPMENT CORPORATION (LEDC) OF LANCASTER, TEXAS, IN SUPPORT OF A GRANT TO GLOBAL FULFILLMENT SOLUTIONS, LTD., A TEXAS LIMITED PARTNERSHIP FROM FUNDS COLLECTED FROM ONE QUARTER (1/4) OF ONE (1) PERCENT 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**, Global Fulfillment Solutions, LTD, a Texas limited partnership has selected Lancaster as the location of their eCommerce fulfillment and distribution facility and has submitted a Letter of Intent to Global Longhorn Center, LP; and

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

**WHEREAS**, the Lancaster Economic Development Corporation (LEDC) is authorized by state law to issue certain grants in order to promote local economic development utilizing funds from funds collected from one quarter (1/4) of one percent (1%) sales and use tax in order to stimulate the economy; and

**WHEREAS**, the Lancaster Economic Development Corporation (LEDC) is responsible for recommending Type A Incentive Grants to the Lancaster City Council for review and approval; and

**WHEREAS**, the Lancaster Economic Development Corporation (LEDC) has determined that the award of the grants to Global Fulfillment Solutions, LTD is in the best interest of the City of Lancaster.

**NOW, THEREFORE, BE IT RESOLVED BY THE LANCASTER ECONOMIC DEVELOPMENT CORPORATION (LEDC) OF THE CITY OF LANCASTER, TEXAS:**

**SECTION 1.** The Board of Directors of the Lancaster Economic Development Corporation (LEDC) approves this resolution and desires to enter into an Economic Development Incentive Agreement to provide economic development grants to Global Fulfillment Solutions, LTD specifically attributed to LEDC herein.

**SECTION 2.** The Board of Directors of the Lancaster Economic Development Corporation (LEDC) authorizes the Board President or other authorized representatives to execute the Agreement subject to ratification and approval by the City Council of the City of Lancaster.

**SECTION 3.** This Resolution shall take effect immediately from and after the date of passage and is so resolved.

**DULY PASSED** and approved by the Lancaster Economic Development Corporation (LEDC) of the City of Lancaster, Texas, on this the 22nd day of March, 2018.

**ATTEST:**

**APPROVED:**

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Mayra A. Ortiz, Board Secretary

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Sandi Collier, Vice President

**APPROVED AS TO FORM:**

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David T. Ritter, City Attorney

## ***ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT***

**Recipient:**           ***GLOBAL FULFILLMENT SOLUTIONS, LTD.***  
5055 Keller Springs Road, Suite 300  
Addison, TX 75001

**Grantors:**           ***LANCASTER ECONOMIC DEVELOPMENT CORPORATION***  
P.O. Box 940  
Lancaster, TX 75146

THIS ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT (“Agreement”) between ***GLOBAL FULFILLMENT SOLUTIONS, LTD.*** a Texas limited partnership (“Recipient”); the ***LANCASTER ECONOMIC DEVELOPMENT CORPORATION***, a Texas non-profit corporation; (“LEDC”), or (“Grantor”) is made and executed on the following recitals, terms and conditions.

**WHEREAS**, Recipient is a provider of comprehensive eCommerce fulfillment and distribution solutions; and

**WHEREAS**, Recipient has applied to Grantor for financial accommodations to enable it to locate a fulfillment center in the City of Lancaster, Texas, including those incentives which are described in this Agreement and those which may be described on any exhibit or schedule attached to this Agreement; and

**WHEREAS**, the City of Lancaster is authorized by Article III, Section 52-a of the Texas Constitution and Texas Local Government Code Chapter 380 to provide economic development grants to promote local economic development and to stimulate business and commercial activity in the City, and LEDC operates under authority of the City to accomplish and further these economic development activities; and

**WHEREAS**, LEDC approved certain financial incentives to Recipient at its March 22, 2018 Board meeting, and City approved certain financial incentives to Recipient at its March 26, 2018 City Council meeting which would allow Recipient to locate its fulfillment center in the City of Lancaster, Texas and to expand operation accordingly; and

**WHEREAS**, Recipient understands and agrees that: (a) in granting, renewing, or extending any financial incentives, Grantor is relying upon Recipient's representations, warranties, and agreements, as set forth and provided for in this Agreement; (b) the granting, renewing, or extending of any incentive by Grantor at all times shall be subject to Grantor's sole judgment and discretion; and (c) all such incentives shall be and shall remain subject to the terms and conditions as set forth in this Agreement.

## SECTION 1. TERM.

This Economic Development Incentive Agreement shall be effective as of March 26, 2018 (the "Effective Date") and shall continue thereafter until all obligations of Recipient to Grantor have been performed in full and the parties terminate this Agreement in writing, or on September 1, 2024, unless terminated sooner under the provisions hereof. **This Agreement will terminate if not executed by all parties within fourteen (14) days of the approval of the Agreement by the latter of the City Council and the LEDC Board.**

## SECTION 2. DEFINITIONS.

The following words shall have the following meanings when used in this Agreement. Terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Texas Uniform Commercial Code.

- a. **Agreement.** The word "Agreement" means this Economic Development Incentive Agreement, together with all exhibits and schedules attached to this Agreement from time to time, if any.
- b. **City.** The word "City" means the City of Lancaster, Dallas County, Texas.
- c. **C.O. Date.** The words "C.O. Date" mean the date that Recipient or Recipient's landlord (Global Longhorn Center, L.P.) receives a Certificate of Occupancy for the Facility from City. The latest qualifying date under this Agreement is September 1, 2019.
- d. **Effective Date.** The words "Effective Date" mean March 26, 2018.
- e. **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."
- f. **Facility.** The word "Facility" means the new fulfillment center, to be constructed by Global Longhorn Center, L.P. on a ± 22 acre site located at 3201 N. Houston School Road within the City limits of Lancaster, Texas, and of which at least 250,000 sq. ft. must be leased, used, or occupied by Recipient as its fulfillment center. In order to qualify as the "Facility" under this Agreement, the facility must meet all of the following criteria: (1) when completed, have an ad valorem real property value of not less than \$20,000,000 on the Dallas Central Appraisal District tax rolls; (2) be approximately (±10%) 400,000 sq. ft. in total under-roof size; and (3) construction on Facility must commence no later than nine (9) months from the Effective Date of this Agreement.



- g. **Incentive Payment.** The words “Incentive Payment” mean any financial payment, benefit, reimbursement, or refund made by City or LEDC to Recipient under this Agreement.
- h. **Incentivized Jobs.** The words “Incentivized Jobs” mean up to sixty (60) newly-created jobs for New Employees situated at the Facility and who are residents of the City, which New Employees have been hired on or between the C.O. Date and the 2<sup>nd</sup> anniversary of the C.O. Date.
- i. **Grantor.** The word "Grantor" means the **LANCASTER ECONOMIC DEVELOPMENT CORPORATION**, a Texas non-profit corporation,
- j. **LEDC.** The word “LEDC” means Lancaster Economic Development Corporation, a non-profit corporation formed for the purpose of advancing economic development in the City of Lancaster, Texas.
- k. **New Employee.** The words “New Employee” means a full-time, direct employee of Recipient, working a minimum of thirty-two (32) hours per week, who shall be employed in a position physically based at the Facility. New Employee shall not include employees of Recipient’s subcontractors or vendors, whether working at the Facility or otherwise.
- l. **Recipient.** The word "Recipient" means **GLOBAL FULFILLMENT SOLUTIONS, LTD.**, a Texas limited partnership, or a wholly-owned affiliate of Recipient approved in advance by Grantor.
- m. **Salary.** The word “Salary” shall mean the annual, W-2 wages of any New Employee, exclusive of benefits, employer-paid taxes, health insurance, bonus, car allowance and related employee perquisites.

### **SECTION 3. INCENTIVE PAYMENTS.**

The following Incentive Payments shall be available to Recipient under the following conditions and the Recipient Obligations set forth below:

- a. **Incentivized Job Incentive Payments.** On or before the second anniversary of the C.O. Date, Recipient may create up to sixty (60) Incentivized Jobs which are eligible for Incentive Payments, and each Incentivized Job shall be maintained at the Facility for not less than one (1) year from the date of any Incentive Payment disbursed for New Employees. The Incentivized Job payment shall be made in two (2) annual installments, within thirty (30) days of first and second anniversaries of the C.O. Date, provided LEDC has received Recipient’s certification of the Incentivized Jobs at the Facility as the first and second anniversaries of the C.O. Date. Upon verification of the data in the certification, LEDC will make an Incentive Payment to Recipient equal to either: (a) four hundred

and no/100 dollars (\$400.00) for each net New Employee hired, if the aggregate average salary of the Incentivized jobs is more than thirty-thousand and no/100 dollars (\$30,000) per annum, or (b) three hundred and no/100 dollars (\$300.00) for each net New Employee hired, if the aggregate average salary of the Incentivized jobs is less than thirty-thousand and no/100 dollars (\$30,000) per annum; up to a maximum aggregate amount of **twenty-four thousand and no/100 dollars, (\$24,000.00) or eighteen thousand and no/100 dollars, (\$18,000.00) as applicable**. It is expressly agreed that LEDC will make payment for each incremental, or net, New Employee only once. Any reduction in New Employees (by layoff, termination or otherwise) which have previously received an incentive payment shall be disclosed to Grantor and adjusted for, including repayment for any overpayments.

- (1) If within one (1) year after any New Employee Incentive Payment has been made, Recipient has received Incentive Payments in excess of the net New Employees that were employed for one (1) full year, Recipient shall immediately refund the appropriate amount of Incentive Payments received relating to such Incentivized Jobs that failed to be maintained by such net, New Employees. For example only, if Recipient created fifty (50) net, New Employees in the first two (2) years following the C.O. Date (in the aggregate) and received \$20,000 in Incentive Payments (at the \$400/job rate); and thereafter, ten (10) net, New Employee failed to be employed for one (1) full year, Recipient would be obligated to pay LEDC \$4,000.00 (representing ten (10) unearned Incentive Payments x \$400/New Employee) within twenty (20) days of receiving written notice that such net, New Employees failed to qualify for the applicable Incentive Payments received by Recipient.
- (2) For each year from the first anniversary to the third anniversary of the C.O. Date, Recipient shall provide Grantor with a detailed report of the status of New Employees and Incentivized Jobs.

- b. **Job Training Assistance Incentive Payment.** LEDC shall make available to Recipient an Incentive Payment in the amount of up to **ten-thousand and no/100 dollars (\$10,000.00)**, payable in two (2) installments for the purpose of job training education for Recipient's employees located at the Facility. Such funds shall be used to reimburse Recipient for job training at Cedar Valley College for Recipient's Facility employees and all courses and training must be completed on or before the second anniversary of the C.O. Date. Recipient shall provide LEDC with a report of costs incurred, courses taken, employee name and dates of attendance, and any certificate or degree obtained on the first and second anniversary of the C.O. Date. LEDC will issue payment within thirty (30) days of receipt of the report.

- c. **Development Costs and Fees Incentive Payment.** LEDC shall make an Incentive Payment to reimburse the development costs and fees incidental to the planning, surveying, architectural, engineering, permitting and construction of the Facility (regardless of whether the costs are actually borne by Recipient or by Global Longhorn Center, L.P.). The payment shall be a one-time payment of **either twenty-five thousand and no/100 dollars (\$25,000.00) if the aggregate average wage of the Incentivized Jobs is less than thirty-thousand dollars per annum, or thirty-five thousand and no/100 dollars (\$35,000.00) if the aggregate average wage of the Incentivized Jobs is greater than thirty-thousand and no/100 dollars.** The payment shall be made after a Certificate of Occupancy (C.O). is obtained for the facility, and Recipient shall certify in writing whether its average wage will exceed or be less than thirty-thousand dollars per annum. Recipient shall provide LEDC with an annual report demonstrating the average wage of the Incentivized Jobs on each of the first three (3) anniversaries of the C.O. Date. If Recipient has been paid the \$35,000 amount, but can demonstrate an average wage of the Incentivized Jobs that is less than thirty-thousand, the additional ten-thousand dollars shall be immediately reimbursable to LEDC.

#### **SECTION 4. RECIPIENT OBLIGATIONS**

- a. Recipient shall comply with the following terms and satisfy the following obligations to be eligible for the Incentive Payments above:
- (1) **Facility.** Recipient shall occupy and operate no less than 250,000 sq. ft. of the Facility as a fulfillment center for no less than sixty (60) continuous months after a Certificate of Occupancy is obtained for the Facility.
  - (2) **Certificate of Occupancy.** Recipient shall obtain a Certificate of Occupancy for the Facility on or before September 1, 2019.
  - (3) **Incentivized Jobs.** The Incentivized Jobs for which Incentive Payments are provided pursuant to Section 3.(a), *supra* shall be maintained for a period of not less than one (1) year from the date any Incentive Payment is made.
- b. **Compliance Certificates and Reports.** Recipient shall provide Grantor with compliance certificates when requested or required hereunder, such certificates or reports specifying or reflecting:
- (1) an existing and valid Certificate of Occupancy for the Facility (subject to the provisions of Section 4.(a)(2)), *supra*;

- (2) an annual, detailed verification of the Incentivized Jobs, indicating the position created, the classification of the job, the W-2 wages/salary, the date the job is filled, and the benefits/perquisites of the job.
  - (3) an annual, detailed verification of Job Training Assistance Incentive report including the information set forth in Section 3.(b), *supra*.
- c. **Performance.** Recipient agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other future agreements between Recipient and Grantor.

## **SECTION 5. CESSATION OF INCENTIVE PAYMENTS.**

If Grantor has made any commitment to make any Incentive Payment to Recipient, whether under this Agreement or under any future agreement, Grantor shall have no obligation to advance or disburse Incentive Payment funds if:

- a. Recipient becomes insolvent, files a petition in bankruptcy or similar proceedings, or is adjudged bankrupt; or
- b. during the pendency of an Event of Default.

## **SECTION 6. EVENTS OF DEFAULT.**

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

- a. **Certificate of Occupancy.** Failure of Recipient to complete any of the following: (1) failure of Global Longhorn Center, LP to construct the Facility in accordance with the specifications set forth in Section 2.(f), *supra*, or (2) failure to obtain a Certificate of Occupancy in accordance with Section 4.(a)(2), *supra*.
- b. **False Statements.** Any warranty, representation or statement made or furnished to Grantor by Recipient under this Agreement or any future agreement (including but not limit to any applications for economic development funds) that is false or misleading in any material respect, either now or at the time made or furnished.
- c. **Insolvency.** Recipient's insolvency, appointment of receiver for any part of Recipient's property, any assignment for the benefit of creditors of Recipient, any type of creditor workout for Recipient, or the commencement of any proceeding under any bankruptcy or insolvency laws by Recipient or against Recipient and not dismissed within sixty (60) days of filing thereof.

- d. **Ad Valorem Taxes.** Failure of Recipient to pay, prior to delinquency, all taxes and assessments levied or assessed upon Recipient's real property improvements or business personal property.
- e. **Undocumented workers.** Recipient certifies that Recipient 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, Recipient is convicted of a violation under 8 U.S.C. § 1324a(f), Recipient shall be in default hereunder.
- f. **Other Defaults.** Failure of Recipient after written notice and thirty (30) days opportunity to cure, to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any of future agreement between Recipient and Grantor, and specifically, should Recipient sublet or assign any of its interest in any portion of the Facility to any unrelated or unaffiliated entity without Grantor's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

#### **SECTION 7. EFFECT OF AN EVENT OF DEFAULT.**

If any Event of Default shall occur and, upon thirty (30) days written notice and opportunity to cure, Recipient has not cured such Event of Default within 30 days of written notice, then after such thirty (30-day) cure period Grantor shall have the option to terminate this Agreement by providing written notice to Recipient and, thereafter, all commitments of Grantor under this Agreement shall terminate immediately (including any obligation to make future Incentive Payments), **and all Incentive Payments previously paid to Recipient under this Agreement that is not otherwise forgiven by action of the LEDC Board or City Council, as applicable, will become immediately due and payable** without notice of any kind to Recipient. The 30-day cure period shall not apply to any default of Recipient under Section 6.C. herein. Any Event of Default which may be cured by the payment of money shall not extend beyond the 30-day period referenced herein.

#### **SECTION 8. INDEMNIFICATION.**

**RECIPIENT SHALL INDEMNIFY, SAVE, AND HOLD HARMLESS GRANTOR, ITS DIRECTORS, OFFICERS, AGENTS, ATTORNEYS, AND EMPLOYEES (COLLECTIVELY, THE "INDEMNITEES") FROM AND AGAINST:**

- A. **ANY AND ALL CLAIMS, DEMANDS, ACTIONS OR CAUSES OF ACTION THAT ARE ASSERTED AGAINST ANY INDEMNITEE IF THE CLAIM, DEMAND, ACTION OR CAUSE OF ACTION RELATES TO TORTIOUS INTERFERENCE WITH CONTRACT OR BUSINESS INTERFERENCE, OR WRONGFUL OR NEGLIGENT USE OF GRANTOR'S INCENTIVE PAYMENTS BY RECIPIENT OR ITS AGENTS AND EMPLOYEES;**

- B. ANY ADMINISTRATIVE OR INVESTIGATIVE PROCEEDING BY ANY GOVERNMENTAL AUTHORITY RELATED TO A CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IN WHICH GRANTOR IS A DISINTERESTED PARTY THAT IS CAUSED BY (OR RESULTS FROM) AN EVENT OF DEFAULT AND/OR THE ACTIONS OR NEGLIGENCE OF RECIPIENT;**
- C. ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION WHICH CONTESTS OR CHALLENGES THE LEGAL AUTHORITY OF GRANTOR OR RECIPIENT TO ENTER INTO THIS AGREEMENT; AND**
- D. ANY AND ALL LIABILITIES, LOSSES, COSTS, OR EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES AND DISBURSEMENTS) THAT ANY INDEMNITEE SUFFERS OR INCURS AS A RESULT OF ANY OF THE FOREGOING; PROVIDED, HOWEVER, THAT RECIPIENT SHALL HAVE NO OBLIGATION UNDER THIS SECTION TO GRANTOR WITH RESPECT TO ANY OF THE FOREGOING TO THE EXTENT THAT SUCH CLAIMS OR LIABILITIES ARISE OUT OF THE NEGLIGENCE OR WILLFUL MISCONDUCT OF GRANTOR OR THE BREACH BY GRANTOR OF THIS AGREEMENT.**

**IF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IS ASSERTED AGAINST ANY INDEMNITEE, SUCH INDEMNITEE SHALL PROMPTLY NOTIFY RECIPIENT, BUT THE FAILURE TO SO PROMPTLY NOTIFY RECIPIENT SHALL NOT AFFECT RECIPIENT'S OBLIGATIONS UNDER THIS SECTION UNLESS SUCH FAILURE MATERIALLY PREJUDICES RECIPIENT'S RIGHT TO PARTICIPATE IN THE CONTEST OF SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION, AS HEREINAFTER PROVIDED. IF REQUESTED BY RECIPIENT IN WRITING, AS SO LONG AS NO DEFAULT OR EVENT OF DEFAULT SHALL HAVE OCCURRED AND BE CONTINUING, SUCH INDEMNITEE SHALL IN GOOD FAITH CONTEST THE VALIDITY, APPLICABILITY AND AMOUNT OF SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION AND SHALL PERMIT RECIPIENT TO PARTICIPATE IN SUCH CONTEST. ANY INDEMNITEE THAT PROPOSES TO SETTLE OR COMPROMISE ANY CLAIM, DEMAND, ACTION, CAUSE OF ACTION OR PROCEEDING FOR WHICH RECIPIENT MAY BE LIABLE FOR PAYMENT OF INDEMNITY HEREUNDER SHALL GIVE RECIPIENT WRITTEN NOTICE OF THE TERMS OF SUCH PROPOSED SETTLEMENT OR COMPROMISE REASONABLY IN ADVANCE OF SETTLING OR COMPROMISING SUCH CLAIM OR PROCEEDING AND SHALL OBTAIN RECIPIENT'S CONCURRENCE THERETO.**

## SECTION 9. RECIPIENT'S REPRESENTATIONS.

By execution hereof, the signatories warrant and represent that they have the requisite authority to execute this Agreement and that the representations made herein are true and accurate in all respects. LEDC warrants and represents that it is a duly created and existing Texas non-profit corporation and that the economic development incentives listed herein have been duly authorized and made in conformance with the Texas Open Meetings Act and other applicable Texas law.

## 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 has been delivered to Grantor and accepted by Grantor in the State of Texas. Recipient agrees to submit to the jurisdiction of the courts of Dallas County, State of Texas, and that venue is proper in said County. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and applicable federal laws.
- c. **Employee Hiring, Materials and Supplies Purchase.** Although not an Event of Default or a condition to any disbursement or advance of any Incentive Payment discussed herein, Grantor requests that Recipient use good faith efforts to satisfy its need for all additional employees from City residents and purchase all materials, supplies and services necessary to affect the construction and subsequent occupancy of the Property from City merchants and businesses.
- d. **Community Involvement.** Although not an Event of Default or a condition to any disbursement or advance or advance of any Incentive Payment discussed herein, Recipient agrees to use good faith efforts to actively participate in community and charitable organizations and/or activities, the purpose of which are to improve the quality of life in City, and to actively encourage its employees to be involved in such organizations and/or activities.
- e. **Recipient Audit.** Recipient agrees to allow Grantor, at a time mutually acceptable to Grantor and Recipient, to audit at Grantor's expense all of Recipient's records, documents, agreements and other instruments in furtherance of the following purposes: (i) to ensure Recipient's compliance with the affirmative covenants and duties set forth in Sections 3 and 4

herein; (ii) to determine the existence of an Event of Default set forth in Section 6 herein; and (iii) to ensure compliance with any other term or condition of this Agreement.

- 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. **Notices.** All notices required to be given under this Agreement shall be given in writing and shall be effective when actually delivered or deposited in the United States mail, first class, postage prepaid, addressed to the party to whom the notice is to be given at the address shown above. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Recipient agrees to keep Grantor informed at all times of Recipient's current address.
- h. **Severability.** If a court of competent jurisdiction finds any provision of this Agreement to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the 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.
- i. **Survival.** All warranties, representations, and covenants made by Recipient in this Agreement or in any certificate or other instrument delivered by Recipient to Grantor under this Agreement shall be considered to have been relied upon by Grantor and will survive the payment of any Incentive Payments under this Agreement regardless of any investigation made by Grantor or on Grantor's behalf.
- j. **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.
- k. **Time is of the Essence.** Time is of the essence in the performance of this Agreement.



- l. **Counterparts.** This Agreement may be executed in counterparts, and such counterparts together shall constitute but one original of the Agreement. Each counterpart shall be equally admissible in evidence, and each original shall fully bind each party who has executed it.
- m. **Waiver.** No failure or delay by a party to insist upon the strict performance of any term, condition or covenant of this Agreement, or to exercise any right, power or remedy hereunder shall constitute a waiver of the same or any other term of this Agreement or preclude such party from enforcing or exercising the same or any such other term, conditions, covenant, right, power or remedy at any later time.
- n. **No Interpretation Against Drafter.** Recipient and Grantor 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.
- o. **Assignment.** Assignment of any benefit or obligation under this Agreement may not be made without prior written consent of the City.

**RECIPIENT ACKNOWLEDGES HAVING READ ALL OF THE PROVISIONS OF THIS AGREEMENT, AND RECIPIENT AGREES TO ITS TERMS.**

**THIS AGREEMENT SHALL BE EFFECTIVE AS OF MARCH 26, 2018.**

**RECIPIENT:**

***GLOBAL FULFILLMENT SOLUTIONS, LTD.,***  
a Texas limited partnership

By: THC Opportunities, Inc.,  
a Texas corporation,  
its general partner

By: \_\_\_\_\_  
R. HOLT LUNSFORD  
Manager

Date Signed: \_\_\_\_\_

**GRANTOR:**

***LANCASTER ECONOMIC DEVELOPMENT CORPORATION,***

a Texas Non-Profit Corporation,

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

SANDI COLLIER

Vice President

Date Signed: \_\_\_\_\_

**PREPARED IN THE OFFICES OF:**

*BROWN & HOFMEISTER, L.L.P.*

740 E. Campbell Road, Suite 800

Richardson, Texas 75081

214/747-6100

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