

RESOLUTION NO. 2012-11-95

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

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

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

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

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

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

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

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

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

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

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

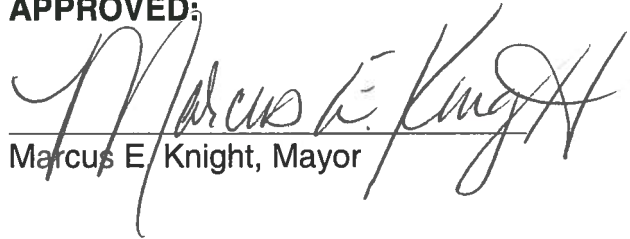
DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 12th day of November 2012.

ATTEST:



Dolle K. Downe, City Secretary

APPROVED:



Marcus E. Knight, Mayor

APPROVED AS TO FORM:



Robert E. Hager, City Attorney

RESOLUTION NO. 2012-02

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

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

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

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

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

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

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

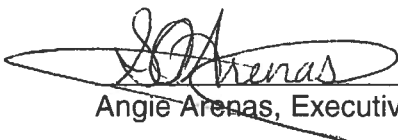
SECTION 1: That the Board of Directors of the Lancaster Economic Development Corporation approves the resolution and Incentive Agreement which is attached hereto.

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

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

ATTEST:

APPROVED:

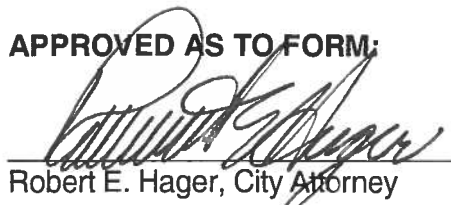


Angie Arenas, Executive Secretary



Ric Peterson, President

APPROVED AS TO FORM:



Robert E. Hager, City Attorney

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

Incentive Agreement

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

W I T N E S S E T H :

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

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

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

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

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

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

**I.
EFFECTIVE DATE; TERM OF AGREEMENT**

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

II. DEFINITIONS

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

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

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

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

III. PROVISIONS RELATING TO INCENTIVE AGREEMENT

COMPANY Obligations:

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

LEDC's Obligations:

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

IV.

DEFAULT; RECAPTURE OF GRANT FUNDS

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

V.

SUCCESSORS AND ASSIGNS

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

VI.

NOTICES

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

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

Company to:

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

LEDC to:

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

VII. LEDC AUTHORIZATION

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

VIII. SEVERABILITY

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

IX. APPLICABLE LAW

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

X. COUNTERPARTS

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

**XI.
ENTIRE AGREEMENT**

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

**XII.
RECORDATION OF AGREEMENT**

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

**XIII.
INCORPORATION OF RECITALS**

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

**XIV.
EXHIBITS**

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

[SIGNATURES ON FOLLOWING PAGE]

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

LANCASTER ECONOMIC
DEVELOPMENT CORPORATION

By: 
Ric Peterson, President

QUAKER SALES & DISTRIBUTION, INC.

By: 
Jeff Randolph
Vice President

EXHIBIT A

LEGAL DESCRIPTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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


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

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

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

GIVEN UNDER MY HAND SEAL OF OFFICE this the 7th day of November, 2012.



Notary Public, State of Texas

My Commission Expires:



