

STATE OF TEXAS       §  
                                  §  
COUNTY OF DALLAS   §

**Economic Development Agreement**

This Economic Development Agreement ("Agreement") is made by and between the City of Lancaster, Texas ("City"), and 2935 Daniel Dale Road Holdings, LLC, a Delaware limited liability company (the "Company"), acting by and through their respective authorized representatives.

**WITNESSETH:**

**WHEREAS**, the Company has purchased approximately 58 acres of real property in the City of Lancaster, Texas, and being more particularly described in Exhibit "A" (the "Property"); and

**WHEREAS**, the Company intends to construct on the Property two warehouse-distribution buildings totaling approximately 1,000,000 square feet combined (the "Buildings") and related infrastructure for future tenant or owner occupied warehouse-distribution operations and building permits will be applied for and construction of the buildings is intended to commence within twenty-four (24) months from the execution of this Agreement; and

**WHEREAS**, the Company has advised the City that a contributing factor that would induce the Company to undertake the Project (hereinafter defined) would be an agreement by the City to provide an economic development grant to the Company to reimburse it for a portion of the Real Estate Taxes (hereinafter defined); and

**WHEREAS**, the City desires to encourage business expansions within the City that will add property tax base and generate additional sales tax and other revenue for the City; and

**WHEREAS**, the promoting the expansion of new or existing businesses within the City will promote economic development, stimulate commercial activity, generate additional sales tax and will enhance the tax base and economic vitality of the City; and

**WHEREAS**, the City has adopted programs for promoting economic development, and this 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 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

**WHEREAS**, the City has determined that making an economic development grant to the Company in accordance with this Agreement is in accordance with the City Economic Development Program and will: (i) further the objectives of the City; (ii) benefit the City and the City's inhabitants; and (iii) will promote local economic development and stimulate business and commercial activity in the City.

**NOW THEREFORE**, in consideration of the foregoing, and on the terms and conditions hereinafter set forth, and other valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**Article I  
Definitions**

For purposes of this Agreement, each of the following terms shall have the meaning set forth herein unless the context clearly indicates otherwise:

“Annual Grant(s)” shall mean annual economic development grants to be provided by the City in an amount equivalent to fifty (50%) of the Real Property Taxes assessed against the Project for a given tax year for a period of seven (7) consecutive tax years beginning with the first calendar year following the Commencement Date, to be paid as set forth herein.

“Casualty” shall mean the Improvements are wholly or partially destroyed by fire, tornado, hurricane, earthquake, flood or similar casualty that renders the Improvements unfit for the intended purpose.

“City” shall mean the City of Lancaster, Texas.

“Commencement Date” shall mean the later of (a) January 1 of the calendar year immediately following the date a Certificate of Occupancy is issued by the City for the occupancy of any portion of the Improvements (it being acknowledged and agreed that there may be multiple tenants of the Improvements and multiple Certificates of Occupancy issued for the Improvements, but the Commencement Date shall be on the issuance of the first Certificate of Occupancy for the occupancy of any portion of the Improvements), and (b) August 1, 2018.

“Company” shall mean 2935 Daniieldale Road Holdings, LLC, a Delaware limited liability company.

“Company Affiliate” shall mean any parent of Company or any wholly-owned subsidiary of either Company or of Company’s parent.

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

“Event of Bankruptcy or Insolvency” shall mean the dissolution or termination of a party’s existence as a going business, insolvency, appointment of receiver for any part of such party’s property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against such party and such proceeding is not dismissed within ninety (90) days after the filing thereof.

“Event of Force Majeure” shall mean any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, terrorist act, or threat thereof, riot, civil commotion, insurrection, government action or inaction (unless caused by the intentionally wrongful acts or

omissions of the party), fires, earthquake, tornado, hurricane, explosions, floods, strikes, slowdowns or work stoppages.

“Expiration Date” shall mean the sixth (6th) full calendar year after the payment of the first Annual Grant.

“Impositions” shall mean all taxes, assessments, use and occupancy taxes, charges, excises, license and permit fees, and other charges by public or governmental authority, general and special, ordinary and extraordinary, foreseen and unforeseen, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on the Company or any property or any business owned by Company within the City.

“Improvements” shall mean the construction and finish out work necessary to commence operations in the Buildings, including construction of the Related Infrastructure.

“Payment Request” shall mean a written request from Company to the City for payment of an Annual Grant.

“Project” shall mean the development of the Property, by the design, construction and maintenance of new improvements and Related Infrastructure for the Buildings on the Property and shall include the Property, the Buildings, the Related Infrastructure and all other Improvements constructed on the Property in connection with any of the foregoing.

“Real Property Taxes” shall mean, all real estate ad valorem taxes assessed and levied by the City on the Project, with or without Improvements in accordance with state law.

“Related Infrastructure” shall mean all City development and building code requirements related to site preparation, water, wastewater, storm water, building construction etc. necessary to receive a City issue “Certificate of Occupancy” at completion of the Project, excluding any tenant improvement or tenant finish out work required for occupancy of the Improvements.

“Required Use” shall mean Company’s continuous operation (either by the Company, or by tenants or by the Company holding out the Project as available for lease to tenants) of warehouse-distribution facilities on the Property. The Improvements do not have to be occupied in order to comply with the Required Use so long as the same are held for lease for warehouse-distribution use.

“Taxable Value” shall mean the assessed value of the Project as certified by the appraisal district, or its successor, for a given year.

## **Article II**

### **Term**

The term of this Agreement shall begin on the last date of execution hereof (the “Effective Date”) and end on the sixth (6th) full calendar year after the payment of the first Annual Grant.

**Article III**  
**Economic Development Grants**

3.1 **Annual Grants.** Subject to the Company's continued satisfaction of all the terms and conditions of this Agreement, the City agrees to provide the Company with the Annual Grants to be paid on March 1 of each calendar year (or the immediately following business day of March 1 is not a business day), beginning with March 1 of the first full calendar year following the Commencement Date, provided the City has timely received the Real Estate Taxes assessed against the Project in full for the respective tax year (i.e., the tax year immediately preceding the year in which an Annual Grant is made; and such Real Estate Taxes with respect to that immediately preceding tax year are used to determine the amount of each Annual Grant). For illustration purposes only, assume that the Real Estate taxes assessed against the Project for tax year 2019 is \$100,000.00 then the amount of the first Annual Grant for the Premises for tax year 2019 would be \$50,000.00 (\$100,000.00 x 50%), and would be paid on March 1, 2020.

3.2 **Grant Limitations.** Under no circumstances shall City obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Further, City shall not be obligated to pay any commercial bank, lender or similar institution for any loan or credit agreement made by the Company. None of the City's obligations under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution.

3.3 **Current Revenue.** The Annual Grants made hereunder shall be paid solely from lawfully available funds that have been appropriated by the City; provided however the City agrees during the term of this Agreement to make a good faith effort to appropriate funds each year to pay the Annual Grant for the then ensuing fiscal year. Consequently, notwithstanding any other provision of this Agreement, the City shall have no obligation or liability to pay any Grants except as allowed by law. The City shall not be required to pay any Annual Grants if prohibited under federal or state legislation or a decision of a court of competent jurisdiction.

3.4 **Tax Protest.** In the event the Company or the owner of the Premises timely and properly protests or contests (including any motion to correct the appraisal roll) the Taxable Value and/or the taxation of the Project, or any portion thereof, with the applicable appraisal district (or its successor), and such protest and/or contest results in a final determination that changes the appraised value and/or the Taxable Value of the Project or the amount of ad valorem taxes assessed and due for the Project, or portion thereof, after an Annual Grant has been paid for such Project for such tax year, the Annual Grant for such tax year shall be adjusted (increased or decreased as the case may be) accordingly on the date of payment of the next Annual Grant payment date, or within sixty (60) business days after such determination in the event no further Annual Grant payments are due under the Agreement.

3.5 **Refunds.** In the event the City determines in its reasonable discretion that the amount of an Annual Grant paid by the City to the Company was incorrect, the Company shall, within sixty (60) days after receipt of written notification thereof from the City specifying the amount by which such Annual Grant exceeded the correct amount to which the Company was entitled (together with such records, reports and other information necessary to support such determination), pay such amount to the City. If the City determines that the amount by which such Annual Grant was less than the correct amount to which the Company was entitled (together with such records, reports and other information necessary to support such determination), the City shall, within sixty (60) days, pay the adjustment to the Company. If the Company disputes the City's

determination, the parties shall seek to amicably resolve the matter, subject to either party's right to pursue any available rights or remedies in connection therewith.

#### **Article IV Conditions to the Economic Development Grant**

The obligation of the City to provide the Annual Grants shall be conditioned upon the Company's continued compliance with and satisfaction of each of the terms and conditions of this Agreement and each of the conditions set forth below:

4.1 During the term of this Agreement following the Commencement Date and continuing thereafter until the Expiration Date, or earlier termination, the Company agrees to continuously own, lease or make available for lease the Improvements and shall not allow the operation of the Improvements in conformance with the Required Use to cease for more than sixty (60) days except in connection with, and to the extent of a Casualty or an Event of Force Majeure.

4.2 The Company shall commence Project construction on the Property within twenty-four months (24 months) of the execution date of this Agreement or the agreement will terminate. For purposes of this Agreement, commencement of Project construction shall mean commencement of site work and Improvements on the Property.

4.3 The Company shall not have an uncured breach or default of this Agreement beyond all applicable notice and cure periods.

#### **Article V Termination**

5.1 This Agreement terminates on the Expiration Date, and may prior to the Expiration Date, be terminated upon any one or more of the following:

- (a) by mutual written agreement of the parties;
- (b) by either party, if the other party defaults or breaches any of the terms or conditions of this Agreement and such default or breach is not cured within ninety (90) days after written notice thereof;
- (c) by City, if any Impositions owed to the City or the State of Texas by Company shall have become delinquent (provided, however, Company retains the right to timely and properly protest and contest any such taxes or Impositions);
- (d) by City, if Company suffers an Event of Bankruptcy or Insolvency; or
- (e) by either party if any subsequent Federal or State legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable.
- (f) should Company fail to return fully signed and executed agreement(s) to the City within 30 days of approval of agreement(s) by the Lancaster City Council, the agreement(s) and the incentive offer they represent, shall be deemed to be withdrawn and shall have no further affect.

5.2 In the event this Agreement is terminated by the City pursuant to Section 5.1(b), (c), or (d), the Company shall not be entitled to receive any subsequent Annual Grants under this Agreement but shall have no obligation to refund to the City any Annual Grants (or portion thereof or interest accrued thereon) previously paid by the City to the Company.

5.3 In the event this Agreement is terminated by the City pursuant to Section 5.1(e), the Company shall, only if such legislation or court decision requires, immediately refund to the City an amount equal to the Annual Grant(s) paid by the City to the Company immediately preceding the date of such termination. The repayment obligation of Company set forth in this section 5.3 hereof shall survive termination.

5.4 If the Company defaults under this Agreement, the right to terminate this Agreement shall be the City's sole and exclusive remedy and in no event shall the Company be liable for any damages as a result of a breach of this Agreement and all such damages are hereby waived by the City.

## **Article VI Miscellaneous**

6.1 **Binding Agreement.** The terms and conditions of this Agreement are binding upon the successors and permitted assigns of the parties hereto.

6.2 **Limitation on Liability.** It is understood and agreed between the parties that the Company and City, in satisfying the conditions of this Agreement, have acted independently, and the City assumes no responsibilities or liabilities to third parties in connection with these actions.

6.3 **No Joint Venture.** It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the parties.

6.4 **Authorization.** Each party represents that (i) it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement, and (ii) the undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto.

6.5 **Notice.** Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below (or such other address as such party may subsequently designate in writing) or either on the day actually received or upon first attempted delivery, if sent by courier or otherwise hand delivered.

If intended for City, to:

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

With a copy to:

Robert E. Hager  
Nichols, Jackson, Dillard,  
Hager & Smith, L.L.P  
1800 Lincoln Plaza  
500 North Akard  
Dallas, Texas 75201

If intended for Company:

2935 Danieldale Road Holdings, LLC  
c/o Clarian Partners  
717 McKinney Avenue, Suite 1900  
Dallas, TX 75202  
Attention: Ryan Bandy

6.6 **Entire Agreement.** This Agreement is the entire Agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the parties that in any manner relates to the subject matter of this Agreement, except as provided in any Exhibits attached hereto.

6.7 **Governing Law.** The Agreement shall be governed by the laws of the State of Texas, without giving effect to any conflicts of law rule or principle that might result in the application of the laws of another jurisdiction; and exclusive venue for any action concerning this Agreement shall be in the State District Court of Dallas County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said court.

6.8 **Amendment.** This Agreement may only be amended by the mutual written agreement of the parties.

6.9 **Legal Construction.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

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

6.11 **Successors and Assigns.** This Agreement may not be assigned without the City's prior written consent, except to a Company subsidiary or to a subsequent owner of the Project. Neither the Company nor its legal representatives or successors in interest shall, by operation of law or otherwise, assign, mortgage, pledge, encumber or otherwise transfer this Agreement or any part hereof, or the interest of the Company under this Agreement in either case except to a Company subsidiary or to a subsequent owner of the Project, without obtaining the City's prior written consent, which may not be withheld. Any attempted assignment by the Company, except to a Company subsidiary or subsequent owner of the Project, in violation of the terms and

provisions of this Agreement shall be void and shall constitute a material breach of this Agreement.

6.12 **Recitals**. The recitals to this Agreement are incorporated herein.

6.13 **Counterparts**. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

6.14 **Survival of Covenants**. Any of the covenants and obligations of the parties hereunder as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

6.15 **Conditions Precedent**. This Agreement is subject to and conditioned upon the following conditions which are conditions precedent to the obligations of the parties: (i) Company shall diligently and faithfully, in a good and workmanlike manner, make or cause the construction and finish out improvements to the Project in accordance with all applicable state and local laws and regulations or a valid waiver thereof; (ii) Company shall obtain a Certificate of Occupancy for the Project.

**Signature page to follow**




EXECUTED on this 22<sup>nd</sup> day of February, 2016.


**CITY OF LANCASTER, TEXAS**

By:   
Opal Mauldin-Robertson, City Manager

Attest:


By:   
Sorangel O. Arenas, City Secretary

Approved as to Form:

By:   
Robert E. Hager, City Attorney

EXECUTED on this 26 day of FEBRUARY, 2016.

2935 DANIELDALE ROAD HOLDINGS, LLC, a  
Delaware limited liability company

By:   
Name: Andrew S. Lowe  
Title: Senior Vice President AUTHORIZED PERSON

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 Opal Mauldin-Robertson, City Manager of the City of Lancaster, 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 24th day of February, 2016.



Cheryl Womble  
Notary Public, State of Texas

My Commission Expires:  
April 1, 2019

ACKNOWLEDGMENT

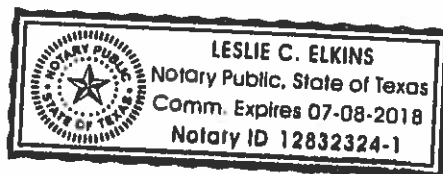
STATE OF TEXAS       §  
                                  §  
COUNTY OF DALLAS   §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Andrew S. Lowe, the Senior Vice President of 2935 Daniieldale Road Holdings, LLC, a Delaware limited liability company, known to me to be the person and agent whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said limited liability company, and that he executed the same as the act of said limited liability company for the purpose and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND SEAL OF OFFICE this the 21<sup>st</sup> day of FEBRUARY, 2016.

Leslie C. Elkins  
Notary Public, State of Texas

My Commission Expires:  
7/8/2018



## EXHIBIT A

### LEGAL DESCRIPTION OF THE PROPERTY

DESCRIPTION, of a 58.206 acre tract of land situated in the S. B. Runyon Survey, Abstract No. 1199, Dallas County, Texas; said tract being all of Lot 1 and Lot 2, Block A, Contract Freighters, Inc. Addition, an addition to the City of Lancaster, according to the Amended Plat recorded in Volume 99155, Page 60 of the Deed Records of Dallas County, Texas; said Lot 1 and Lot 2, Block A, being part of those tracts of land described in Warranty Deeds to Con-Way Truckload, Inc., recorded in Instrument Number 200900241247 and Instrument Number 200900241246 of said Official Public Records of Dallas County, Texas; said 58.206 acre tract being more particularly described as follows:

BEGINNING, at a point for corner in the north line of Danieldale Road (a variable width right-of-way), at the southwest corner of said Lot 1, Block A and in the east line of a tract of land described as Tract II in Warranty Deed With Vendor's Lien to Hugo F. Duran and Maria S. Duran, recorded in Instrument Number 201000111603 of said Official Public Records; from which a 1/2-inch iron rod found bears South 00 degrees, 32 minutes East, a distance of 3.4 feet;

THENCE, North 00 degrees, 57 minutes, 58 seconds West, departing said north line of Danieldale Road, along the east line of said Lot 1, Block A, a distance of 1,566.01 feet to 1/2-inch iron rod found for corner; said point being the northwest corner of said Lot 1, Block A and the most southerly southwest corner of a tract of land described as Tract 2C in Warranty Deed to Highland Park Land Company, recorded in Instrument Number 201100269768 of said Official Public Records;

THENCE, North 88 degrees, 54 minutes, 53 seconds East, along the north line of said Lot 1, Block A and the south line of said Highland Park Land Company tract, at a distance of 548.49 feet pass the northeast corner of said Lot 1, Block A and the northwest corner of said Lot 2, Block A, in all a total distance of 729.17 feet to a 5/8-inch iron rod found for corner; said point being at an angle point in the north line of said Lot 2, Block A, the most southerly southeast corner of said Highland Park Land Company tract, and a reentrant corner of a tract of land described in Executor's Deed to Randy Justiss and Virginia A. Justiss, recorded in Instrument Number 200900077417 of said Official Public Records;

THENCE, North 88 degrees, 56 minutes, 45 seconds East, along said north line of Lot 2, Block A and the most northerly south line of said Justiss tract, a distance of 995.49 feet to a point for corner; said point being the northeast corner of said Lot 2, Block A and a reentrant corner for said Justiss tract; from which a 1-inch iron pipe found bent bears South 54 degrees, 07 minutes, East a distance of 0.4 feet;

THENCE, South 06 degrees, 31 minutes, 41 seconds West, along the east line of said Lot 2, Block A and the west line of said Justiss tract, at a distance of 722.02 feet passing a 1/2-inch iron rod found for witness, in all a total distance of 781.67 feet to a point for corner; said point being in the center of a creek;

THENCE, along the east line of said Lot 2, Block A and the west line of said Justiss tract; along the approximate centerline of said creek the following twelve (12) courses and distances:

South 36 degrees, 13 minutes, 47 seconds West, a distance of 19.88 feet to a point for corner;

South 06 degrees, 23 minutes, 04 seconds West, a distance of 273.29 feet to a point for corner;

South 04 degrees, 21 minutes, 20 seconds West, a distance of 69.21 feet to a point for corner;

South 19 degrees, 17 minutes, 57 seconds West, a distance of 27.39 feet to a point for corner;

South 15 degrees, 41 minutes, 01 seconds East, a distance of 18.91 feet to a point for corner;

South 07 degrees, 41 minutes, 55 seconds West, a distance of 28.86 feet to a point for corner;

South 30 degrees, 27 minutes, 23 seconds West, a distance of 17.85 feet to a point for corner;

South 02 degrees, 28 minutes, 23 seconds East, a distance of 50.66 feet to a point for corner;

South 09 degrees, 15 minutes, 32 seconds West, a distance of 194.49 feet to a point for corner;

South 03 degrees, 41 minutes, 33 seconds West, a distance of 80.60 feet to a point for corner;

South 26 degrees, 42 minutes, 47 seconds East, a distance of 22.70 feet to a point for corner;

South 26 degrees, 33 minutes, 32 seconds West, a distance of 10.48 feet to a point for corner in said north line of Danieldale Road; said point being the southeast corner of said Lot 2, Block A; from which a 1/2-inch iron rod with "PACHECO KOCH" cap set for witness corner bears South 89 degrees, 05 minutes, 41 seconds West, a distance of 50.00 feet;

THENCE, South 89 degrees, 05 minutes, 41 seconds West, departing the west line of said Justiss tract, along said north line of Danieldale Road and the south line of said Lot 2, Block A, at a distance of 506.45 feet passing the southwest corner of said Lot 2, Block A and the southeast corner of said Lot 1, Block A, from which a 1/2-inch iron rod found bears South 01 degrees, 05 minutes East a distance of 0.7 feet, at a distance of 538.78 feet passing a 1/2-inch iron rod found, in all a total distance of 1,516.24 feet to the POINT OF BEGINNING;

CONTAINING: 2,535,466 square feet or 58.206 acres of land, more or less.