

RESOLUTION NO. 2017-08-50

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 WAYFAIR, LLC., AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Lancaster, Texas, ("City") desires to grant certain incentives to Wayfair, LLC., a Delaware limited liability company, for the purpose of locating a state-of-the-art regional distribution, warehouse, fulfillment, office center within the City of Lancaster, Texas; and

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

WHEREAS, the City is authorized by Chapter 380 of the Texas Local Government Code to 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 Agreement by and between the City of Lancaster and Wayfair, LLC.

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

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

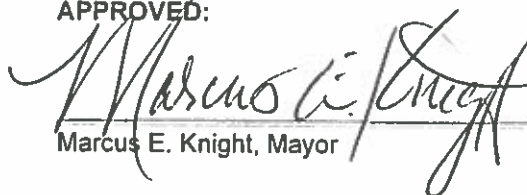
DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 14th day of August, 2017.

ATTEST:



Sorangel O. Arenas, City Secretary

APPROVED:



Marcus E. Knight, Mayor

APPROVED AS TO FORM:



David T. Ritter, City Attorney

**ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT**

**Recipient:**            **WAYFAIR LLC**  
4 Copley Place, Floor 7  
Boston, MA 02116

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

**CITY OF LANCASTER, TEXAS**  
211 N. Henry Street  
Lancaster, TX 75146

THIS ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT ("Agreement") between **WAYFAIR LLC**, a Delaware limited liability company ("Recipient"); the **LANCASTER ECONOMIC DEVELOPMENT CORPORATION**, a Texas non-profit corporation; and **CITY OF LANCASTER, TEXAS**, a Texas municipal corporation (individually "City" and "LEDC", and each referred to as "Grantor" for purposes of their respective Incentive Payments) is made and executed on the following recitals, terms and conditions.

**WHEREAS**, Recipient is a leading, NYSE-listed e-commerce company in the home furnishings and décor sector; and

**WHEREAS**, Recipient has applied to Grantor for financial accommodations to enable it to locate a major distribution, warehouse, fulfillment, and office 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**, LEDC approved certain financial incentives to Recipient at its August 1, 2017 Board meeting, and City approved certain financial incentives to Recipient at its August 14, 2017 City Council meeting which would allow Recipient to locate its regional e-commerce, distribution, warehouse, fulfillment, and office center in the City of Lancaster, Texas and to expand operations 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 August 14, 2017 (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 the sooner of the termination of the Lease or August 14, 2029, 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 later of the City Council and the EDC 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. **Business Personal Property.** The words "Business Personal Property" means property as defined under Texas Tax Code Section 1.04(5) and which is taxable within the City of Lancaster, Texas, and for which business personal property taxes are paid by Recipient.
- c. **City.** The word "City" means the City of Lancaster, Dallas County, Texas.
- d. **Confirmed Annual Sales Volume.** The words "Confirmed Annual Sales Volume" mean the volume of sales certified by Recipient to have been subject to Sales Tax on an annual basis and for which Sales Tax was collected.
- e. **Effective Date.** The words "Effective Date" mean August 14, 2017.
- f. **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."
- g. **Facility.** The word "Facility" means Recipient's new regional distribution facility, owned by Duke Realty Limited Partnership, an Indiana limited partnership, and leased to Recipient, to be constructed at the Interchange 35 property located at 2820 N. I-35 E Interchange, Lancaster, TX 75134. The Facility shall be a build-to-suit distribution facility of  $\pm$  874,566 square feet located on  $\pm$  47.15 acres of land, and shall be constructed to specifications consistent with the July 19, 2017 Final LOI Terms between

Duke Realty Limited Partnership and Recipient. In order to qualify as the "Facility" under this Agreement, the facility must meet all of the following criteria: (1) when completed and fully valued and assessed, have an ad valorem real property value of not less than \$20,000,000 on the Dallas Central Appraisal District tax rolls; (2) be the site of equipment with an appraisal business personal property value of not less than \$6,000,000; (3) be the warehouse/fulfillment site of Recipient's inventory with a retail value of not less than \$1,500,000; and (4) construction on facility must commence no later than nine (9) months from the Effective Date of this Agreement.

- h. **Incentive Payment.** The words "Incentive Payment" mean any financial payment, benefit, reimbursement, or refund made by City or LEDC to Recipient under this Agreement.
- i. **Incentivized Jobs.** The words "Incentivized Jobs" mean up to two hundred (200) newly-created jobs for New Employees situated at the Facility and who are residents of the City, which New Employees have been hired from the Effective Date until the 2<sup>nd</sup> anniversary of the Effective Date and which New Employees, in the aggregate, have an average Salary of not less than \$35,942 per New Employee.
- j. **Grantor.** The word "Grantor" means the *LANCASTER ECONOMIC DEVELOPMENT CORPORATION*, a Texas non-profit corporation, or *CITY OF LANCASTER, TEXAS*, a Texas municipal corporation, for purposes of their respective Incentive Payments made under this Agreement.
- k. **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.
- l. **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.
- m. **Recipient.** The word "Recipient" means *WAYFAIR LLC.*, a Delaware limited liability company, or a wholly-owned affiliate of Recipient approved by Grantor.
- n. **Sales Tax.** The words "Sales Tax" means the City's 1% sales taxes collected by Recipient pursuant to the Texas Tax Code for: (1) orders received at the Facility and fulfilled at the Facility; and (2) orders received

at a location other than a Texas place of business and fulfilled at the Facility.

- o. 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 Effective Date, Recipient may create up to two hundred (200) Incentivized Jobs which are eligible for Incentive Payments, and each Incentivized Job shall be maintained at the Facility for not less than five (5) years from the date of any Incentive Payment disbursed for New Employees. The Incentivized Job payment shall be made in one (1) installment, within (30) days of the second anniversary of the Effective Date and receipt of Recipient's certification of the Incentivized Jobs at the Facility as of the second anniversary date of the Effective Date. Upon verification of the data in the certification, LEDC will make an Incentive Payment to Recipient equal to five hundred and no/100 dollars (\$500.00) for each net New Employee hired; up to a maximum aggregate amount of one hundred thousand and no/100 DOLLARS. (\$100,000.00). 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 on each of the first five anniversary dates of the Effective Date after the New Employee Incentive Payment has been made, Recipient has received Incentive Payments in excess of the net New Employees then located at the Facility, Recipient shall immediately refund that amount representing unearned Incentivized Jobs. For example, if Recipient created one hundred (100) New Employees in the first two (2) years following the Effective Date (in the aggregate) and received \$50,000 in Loan Advances; and thereafter, at the end of the third year following the Effective Date, Recipient had only eighty (80) New Employees located at the Facility, Recipient would be immediately obligated to pay LEDC \$10,000 (representing twenty (20) unearned Incentivized Jobs x \$500/New Employee).
  - (2)** For each year from the first anniversary to the seventh anniversary

of the Effective 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 fifty-thousand and no/100 dollars (\$50,000.00), payable in two (2) equal annual 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 Effective Date. Recipient shall provide LEDC with a report of costs incurred, courses taken, employee name and dates of attendance, course grades, and any certificate or degree obtained on the first and second anniversary of the Effective Date. LEDC will issue payment within thirty (30) days of receipt of each annual report.
- c. **Sales Tax Reimbursement Incentive Payment.** The City shall make an Incentive Payment to reimburse Recipient for Sales Tax collected and paid for Recipient's operations made at, and attributable to, the Facility for up to ten (10) years. The first payment shall be made after the calculation, submission and confirmation of the sales volumes and taxes paid for the first full calendar year after Recipient begins business operations, including sales, at the Facility. The Incentive Payments shall be based the following criteria:

<b>Confirmed Annual Sales Volume</b>	<b>Years of Eligibility</b>	<b>Percentage of Sales Taxes Reimbursed</b>
<b>\$300 million +</b>	<b>10</b>	<b>50%</b>
<b>\$200 million+ to \$300 million</b>	<b>10</b>	<b>45%</b>
<b>\$100 million + to \$200 million</b>	<b>10</b>	<b>40%</b>
<b>\$50 million+ to \$100 million</b>	<b>10</b>	<b>35%</b>
<b>\$25 million + to \$50 million</b>	<b>10</b>	<b>30%</b>
<b>\$10 million+ to \$25 million</b>	<b>10</b>	<b>25%</b>
<b>Less than \$10 million</b>	<b>10</b>	<b>20%</b>

It is understood that the amount of the Incentive Payment may vary from year to year based on the amount of the Confirmed Annual Sales Volume and net sales tax receipts collected and paid at the Facility. Sales Tax Reimbursement Incentive Payments shall be available only for up to the first ten (10) years following the first full calendar year after Recipient begins business operations at the Facility.

- d. **Sales Volume Incentive Payment.** LEDC shall pay the sum of up to three hundred twenty thousand and no/100 dollars (\$320,000.00), based on the achievement of Confirmed Annual Sales Volume as follows:

- (1) for each calendar year in the first five (5) full calendar years after Recipient begins business operations at the Facility in which Recipient's Confirmed Annual Sales Volume exceeds \$12.8 million, and for which the Recipient has collected and remitted the 2% local sales tax on the Confirmed Annual Sales Volume, Recipient or a party designated in writing by Recipient shall be entitled to a Sales Volume Incentive Payment payable by LEDC in the amount of sixty-four thousand and no/100 dollars. (\$64,000.00);
- (2) if Recipient's aggregate Confirmed Annual Sales Volume reaches a cumulative total of sixty-four million dollars (\$64,000,000.00) at any time during the first five (5) full calendar years after the commencement of business operations at the Facility, and if Recipient has collected and remitted the 2% local sales tax on the cumulative Confirmed Annual Sales Volume Recipient shall be entitled to the balance of the unpaid Sales Volume Incentive Payment, up to a maximum amount not to exceed the amount in Section 3.(d), *supra*.

Payment of this Incentive Payment is expressly conditioned on verification that the 2% local sales tax has been collected and remitted to the City by Recipient.

- e. **Business Personal Property Tax Refunds.** The City shall make an Incentive Payment to Recipient to reimburse a portion of the Business Personal Property taxes paid by the Recipient to the City for up to seven (7) years. The first payment shall be made after Recipient pays taxes for the first tax year that begins after the City issues a Certificate of Occupancy for Recipient's occupancy of the Facility and for which the Business Personal Property is fully assessed by the taxing authorities. The Incentive Payments shall be based upon the following percentages, which shall apply to each year as follows:

Tax Years	Percentage of City BPP Taxes Reimbursed
1 <sup>st</sup> through 7 <sup>th</sup> tax year after issuance of Certificate of Occupancy	50% (up to \$20 million in taxable value) 65% (if taxable value exceeds \$20 million)

Notwithstanding the foregoing, the City shall have no obligation to pay Recipient any Incentive Payment until receipt of the BPP Tax Report described in Section 4.(b)(3)(iii) of this Agreement. The City agrees to provide the Incentive Payment to Recipient within thirty (30) days following receipt and acceptance of the BPP Tax Report.

#### 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) **Lease.** Recipient shall lease the Facility from Duke Realty Limited Partnership for a term of at least eighty-seven (87) months and which shall commence on September 1, 2018 or upon substantial completion of the Facility, whichever is later, and shall provide Grantor with a fully executed copy of the Lease within fourteen (14) days of the approval of this Agreement by the City Council
  - (2) **Certificate of Occupancy.** Recipient shall obtain a Certificate of Occupancy for the Facility on or before December 1, 2018.
  - (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 five (5) years from the date the 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, including the baseline number of employees as of the Effective Date, 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 (i) Job Training Assistance Incentive report including the information set forth in Section 3.(b), *supra*; (ii) Confirmed Annual Sales Volume report including certification by Recipient of sales volume and sales tax collected and paid to each taxing entity; and (iii) Business Personal Property (BPP) Tax report including certification by Recipient of Business Personal Property located at the Facility and paid to each taxing entity.
- c. **Performance.** Recipient agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement.

## **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 other 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) execution and delivery of the Lease described in Section 4.(a)(1), *supra*; (2) failure of Duke Realty Limited Partnership to construct the Facility in accordance with the specifications set forth in Section 2.(g), *supra*, or (3) 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 or on behalf of Recipient under this Agreement or any related document (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 related document, or failure of Recipient to comply with or to perform any other term, obligation, covenant or condition contained in any other obligation, covenant or condition contained in this Agreement or in any of related document, or failure of Recipient to comply with or to perform any

other term, obligation, covenant or condition contained in any other written agreement between Grantor and Recipient, 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 all commitments of Grantor under this Agreement immediately shall terminate (including any obligation to make Loan advances), and all amounts previously advanced under the Loan, not otherwise forgiven by action of the LEDC Board or City Council, as applicable, will become immediately due and payable, all without notice of any kind to Recipient, at the option of Grantor, except for an Event of Default described in the "Insolvency" subsection above, in which case such acceleration shall be automatic and not optional. Any Default which may be cured by the payment of money shall not extend beyond the 30-day period referenced herein. Any amounts due and payable shall not accrue interest until they are deemed to be past due as provided in the Note.

#### **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;**
- 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 any related documents and that the representations made herein, and in the related documents, are true and accurate in all respects.

#### **SECTION 10. MISCELLANEOUS PROVISIONS.**

The following miscellaneous provisions are a part of this Agreement:

- a. **Amendments.** This Agreement, together with any related documents, 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 the Loan or any portion thereof, 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 of the Loan or any portion thereof, 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 or any related document.
- 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.

**RECIPIENT ACKNOWLEDGES HAVING READ ALL OF THE PROVISIONS OF THIS**

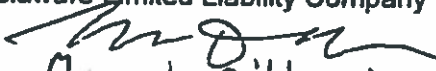
**LOAN AGREEMENT, AND RECIPIENT AGREES TO ITS TERMS.**

**THIS AGREEMENT SHALL BE EFFECTIVE AS OF AUGUST 14, 2017.**

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**RECIPIENT:**

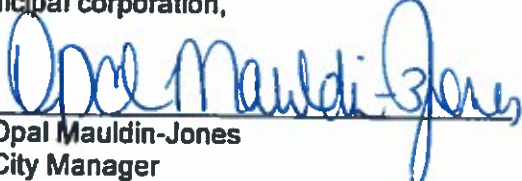
**WAYFAIR LLC**  
a Delaware Limited Liability Company

By:   
Michael O'Hawley  
~~NICHOLAS MALONE~~ *no*  
Wayfair LLC

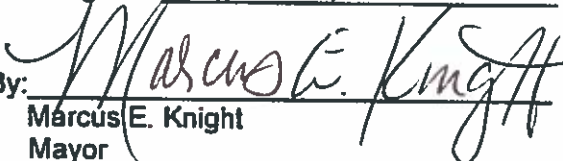
Date Signed: 8/17/2017

**GRANTOR:**

**CITY OF LANCASTER, TEXAS** a Texas  
municipal corporation,

By:   
Opal Mauldin-Jones  
Opal Mauldin-Jones  
City Manager

Date Signed: August 28, 2017

By:   
Marcus E. Knight  
Marcus E. Knight  
Mayor

Date Signed: August 28, 2017

**PREPARED IN THE OFFICES OF:**

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