

RESOLUTION NO. 26-2018

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, CONSENTING TO THE ASSIGNMENT BY INDUSTRIAL DEVELOPMENTS INTERNATIONAL (TEXAS), L.P. ("IDI"), TO IDIL SKYLINE D, LLC ("IDIL SKYLINE"), OF IDI'S INTEREST IN THAT CERTAIN ECONOMIC DEVELOPMENT PROGRAM AGREEMENT (CHAPTER 380 AGREEMENT) DATED JANUARY 26, 2018, BETWEEN IDI AND THE CITY OF MESQUITE, TEXAS, RELATING TO AN INDUSTRIAL BUILDING PROJECT LOCATED AT 2250 SKYLINE DRIVE, MESQUITE, TEXAS; AND AUTHORIZING THE CITY MANAGER TO EXECUTE ALL DOCUMENTS NECESSARY OR REQUESTED IN CONNECTION THEREWITH.

WHEREAS, pursuant to City Resolution No. 73-2017, the City of Mesquite, Texas ("City") and Industrial Developments International (Texas), L.P. ("IDI"), entered into an Economic Development Program Agreement (Chapter 380 Agreement) dated effective January 26, 2018, (the "380 Agreement") in connection with the development of an industrial building consisting of approximately 487,200 square feet (the "Project") to be located at 2250 Skyline Drive, Mesquite, Texas (the "Property"); and

WHEREAS, in order to provide construction financing to facilitate the completion of the Project, IDI's lender, Compass Bank, is requiring that IDI transfer the Property to an affiliated single purpose entity, IDIL Skyline D, LLC ("IDIL Skyline"); and

WHEREAS, in connection with the transfer of the Property to IDIL Skyline, IDI desires to assign its interest in the 380 Agreement to IDIL Skyline; and

WHEREAS, IDI Logistics, LLC, is the parent company of both IDI and IDIL Skyline; and


WHEREAS, pursuant to Article X, Section 1 of the 380 Agreement, the rights and obligations of IDI under the 380 Agreement may not be assigned without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed; and

WHEREAS, IDI has requested that the City consent to the assignment of its interest in the 380 Agreement to IDIL Skyline.

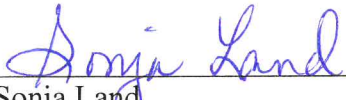
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. That the City Council consents to the assignment by IDI to IDIL Skyline of IDI's interest in the 380 Agreement and hereby authorizes the City Manager to execute all documents necessary or requested in connection therewith.


DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 7th day of May, 2018.



Stan Pickett
Mayor

ATTEST:


Sonja Land
City Secretary

APPROVED:


Paula Anderson
Interim City Attorney

ASSIGNMENT AND ASSUMPTION OF AGREEMENT

FOR VALUE RECEIVED, INDUSTRIAL DEVELOPMENTS INTERNATIONAL (TEXAS), L.P., a Georgia limited partnership (“Assignor”) hereby assigns, transfers and sets over to IDIL SKYLINE D, LLC, a Delaware limited liability company (“Assignee”), as of May 10, 2018, all right, title, interest, liabilities and obligations of Assignor in that certain Economic Development Program Agreement dated January 26, 2018 (the “Agreement”) between Assignor and the City of Mesquite, a Texas home rule municipality (the “City”), with respect to the property located at 2250 Skyline Drive, Mesquite, Texas (the “Property”), subject to the terms below:

1. Of even date herewith, Assignor shall convey the Property to Assignee.
2. Assignor shall remain liable for and hereby assumes full responsibility for all obligations and liabilities of the “Company” as such term is used and defined in the Agreement (the “Company”) arising under the Agreement prior to the date hereof. Assignor also agrees to indemnify, defend and hold Assignee harmless from any claims, liabilities or costs (including reasonable attorneys’ fees) arising from the same.
3. Assignee hereby: (i) accepts this assignment; (ii) ratifies the terms and provisions of the Agreement; and (iii) assumes full responsibility for and agrees to timely keep and perform all terms, provisions, covenants, conditions, obligations and liabilities to be kept or performed by the Company under the terms of the Agreement on and after the date hereof. Assignee also agrees to indemnify, defend and hold Assignor harmless from any claims, liabilities, or costs (including reasonable attorneys’ fees) arising from the same.
4. This Assignment and Assumption Agreement (this “Assignment”) shall be construed and enforced in accordance with the laws of the State of Texas (without giving effect to any conflict of law principles that would result in the application of the laws of any state other than Texas). Venue of any action, suit or proceeding to construe or enforce this Assignment shall lie exclusively in state courts in Dallas County, Texas. Each party hereto waives the right to challenge such venue or to seek the transfer of any suit, action or proceeding to a more convenient forum.
5. Assignee agrees that the consent to this Assignment provided by the City of Mesquite, a Texas home rule municipality as set forth below shall apply only to the assignment contemplated by this Assignment and shall not constitute a waiver of the necessity for the Assignee, or any subsequent assignee, to obtain the consent to any subsequent assignment of the Agreement.
6. Assignor represents: (i) that it is duly formed, validly existing and in good standing under the laws of the State of its formation; (ii) that it is duly authorized to transact business in the State of Texas; (iii) that this Assignment has been duly authorized by Assignor; and (iv) that Assignor has full power and authority to enter into this Assignment and to fulfill its obligations under this Assignment. Assignee represents: (i) that it is duly formed, validly existing and in good standing under the laws of the State of its formation; (ii) that it is duly authorized to transact business in the State of Texas; (iii) that this Assignment has been duly authorized by Assignee; and (iv) that Assignee has full power and authority to enter into this Assignment and to fulfill its obligations under this Assignment. Each person signing this Assignment represents that such person has the authority to sign this Assignment on behalf of the party indicated.

7. This Assignment may be executed in any number of counterparts all of which taken together shall constitute one and the same instrument and any of the parties or signatories hereto may execute this Assignment by signing any such counterpart. This Assignment may be transmitted between the parties hereto by facsimile machine or via e-mail “.pdf” attachment. The parties hereto intend that electronically transmitted signatures constitute original signatures and that an electronically transmitted Assignment containing signatures of all of the parties hereto is binding on the parties having signed such electronically transmitted Assignment.


[Signature page follows]

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment as of the date set forth above.

ASSIGNOR:


INDUSTRIAL DEVELOPMENTS INTERNATIONAL
(TEXAS), L.P., a Georgia limited partnership

By: ID International (Texas), LLC, a Georgia limited
liability company, its general partner

By: 
Name: _____
Its: Assistant Treasurer
M Thomas Mayfield

ASSIGNEE:

IDIL SKYLINE D, LLC
a Delaware limited liability company

By: 
Name: _____
Its: M Thomas Mayfield
Assistant Treasurer

The undersigned, as the counterparty to the Agreement, hereby consents to the assignment and assumption contemplated by this Assignment.

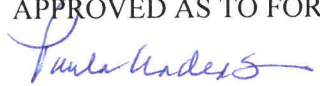
CITY:

CITY OF MESQUITE,
a Texas home rule municipality

By: 
Name: Cliff Keheley
Title: City Manager

Date: May 9, 2018

APPROVED AS TO FORM:



Paula Anderson, Interim City Attorney