

RESOLUTION NO. 60-2021

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, AUTHORIZING THE CITY MANAGER TO FINALIZE AND EXECUTE A FIRST AMENDMENT TO THE MASTER DEVELOPMENT AGREEMENT AND CHAPTER 380 AGREEMENT BETWEEN ALCOTT LOGISTICS PARTNERS, LP, ALCOTT LOGISTICS STATION TRACT D, LP, AND THE CITY OF MESQUITE, TEXAS, FOR THE EARLY EXERCISE OF SECOND PURCHASE OPTION OF TRACT C, IDENTIFYING A THIRD-PARTY DEVELOPER FOR THE ACQUISITION AND DEVELOPMENT OF TRACT C AND RELATED MATTERS; AND AUTHORIZING THE CITY MANAGER TO ADMINISTER THE AMENDMENT FOR SUCH PURPOSES AND TO TAKE ALL ACTIONS NECESSARY OR ADVISABLE TO COMPLETE THE TRANSACTIONS CONTEMPLATED BY THE AMENDMENT ON BEHALF OF THE CITY.

**WHEREAS**, on May 3, 2021, the City Council of the City of Mesquite, Texas, adopted Resolution No. 28-2021, approving a Master Development Agreement and Chapter 380 Agreement (the “**Agreement**”) effective May 26, 2021, between the City of Mesquite, Texas (the “**City**”), Alcott Logistics Partners, LP, and Alcott Logistics Station Tract D, LP, for the development of Alcott Logistics Station Tract B, Tract C, and Tract D, as part of Tax Reinvestment Zone Fourteen (TIRZ No. 14), City of Mesquite; and

**WHEREAS**, the City Council has been presented with a First Amendment to the Agreement (“**First Amendment**”) to allow for early exercise of second purchase option for the purchase of Tract C, identifying Jackson-Shaw Company or its permitted assignee as a third-party developer for Tract C, providing obligations for construction of the Common Public Improvements as defined in the Agreement and reimbursement of construction costs from the TIRZ Alcott Subaccount as defined in the Agreement; and

**WHEREAS**, Jackson-Shaw Company proposes to construct certain Common Public Improvements and a build-to-suit facility within 24 months of commencement of construction, following plans and specification for the building in accordance with the terms of the Agreement, for lease by a national manufacturing tenant which requires the accelerated development of Tract C; and

**WHEREAS**, after conducting a public hearing and upon full review and consideration of the Agreement and First Amendment, a true and correct copy of which is attached hereto as Exhibit 1, and all matters attendant and related thereto, the City Council finds that the First Amendment is in the best interest of the City and will benefit the City and its citizens.

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

**SECTION 1.** That the facts and recitations contained in the preamble of this resolution are hereby found and declared to be true and correct and are incorporated and adopted as part of this resolution for all purposes.

**SECTION 2.** That the City Council finds that the terms and provisions of the First Amendment, a copy of which is attached hereto as Exhibit 1 and incorporated herein by reference, is in the best interest of the City and will benefit the City and its citizens.

**SECTION 3.** That the City Council hereby approves the First Amendment substantially in the form attached as Exhibit 1 and hereby authorizes the City Manager to: (i) finalize and execute the First Amendment, including but not limited to accepting or refusing modifications to Schedule 1 to the First Amendment; and (ii) take such actions and execute such documents as are necessary or advisable to consummate the transactions contemplated by the First Amendment.

**SECTION 4.** That the City Manager is further hereby authorized to administer the First Amendment on behalf of the City including, without limitation, the City Manager shall have the authority to: (i) provide any notices required or permitted by the First Amendment; (ii) approve amendments to the First Amendment provided such amendments, together with all previous amendments approved by the City Manager, do not increase City expenditures under the First Amendment and Agreement in excess of \$50,000; (iii) approve or deny any matter in the First Amendment that requires the consent of the City provided, however, notwithstanding the foregoing, any assignment of the First Amendment that requires the consent of the City pursuant to the terms of the First Amendment shall require the approval of the City Council; (iv) approve or deny the waiver of performance of any covenant, duty, agreement, term or condition of the First Amendment; (v) exercise any rights and remedies available to the City under the First Amendment; and (vi) execute any notices, amendments, approvals, consents, denials and waivers authorized by this Section 4 provided, however, notwithstanding anything contained herein to the contrary, the authority of the City Manager pursuant to this Section 4 shall not include the authority to take any action that cannot be delegated by the City Council or that is within the City Council's legislative functions.

**SECTION 5.** That the sections, paragraphs, sentences, clauses and phrases of this resolution are severable and, if any phrase, clause, sentence, paragraph or section of this resolution should be declared invalid, illegal or unenforceable by the final judgment or decree of any court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of any of the remaining phrases, clauses, sentences, paragraphs and sections of this resolution and such remaining provisions shall remain in full force and effect and shall be construed and enforced as if the invalid, illegal or unenforceable provision had never been included in this resolution.

**SECTION 6.** That this resolution shall take effect immediately upon passage of this resolution.

**DULY RESOLVED** by the City Council of the City of Mesquite, Texas, on the 20th day of September 2021.



Bruce Archer  
Mayor

ATTEST:



Sonja Land  
City Secretary

APPROVED AS TO LEGAL FORM:



David L. Paschall  
City Attorney

**EXHIBIT 1**

**FIRST AMENDMENT TO**

**MASTER DEVELOPMENT AGREEMENT AND CHAPTER 380 AGREEMENT**

**BETWEEN**

**ALCOTT LOGISTICS PARTNERS, LP**

**AND**

**ALCOTT LOGISTICS STATION TRACT D, LP**

**AND**

**CITY OF MESQUITE, TEXAS**

APPROVED BY CITY COUNCIL  
DATE 9.20.2021  
AGENDA ITEM NO. 25

**FIRST AMENDMENT TO**  
**MASTER DEVELOPMENT AGREEMENT AND CHAPTER 380 AGREEMENT**

**BETWEEN**

**ALCOTT LOGISTICS PARTNERS, LP**  
**AND**  
**ALCOTT LOGISTICS STATION TRACT D, LP**  
**AND**  
**CITY OF MESQUITE, TEXAS**

**Dated: September 20, 2021**

This FIRST AMENDMENT TO MASTER DEVELOPMENT AGREEMENT AND CHAPTER 380 AGREEMENT (this "**Amendment**") is executed effective as of the 20<sup>th</sup> day of September, 2021, by and among ALCOTT LOGISTICS PARTNERS, LP, a Texas limited partnership (the "**Developer**"), ALCOTT LOGISTICS STATION TRACT D, LP, a Delaware limited partnership ("**Tract D Developer**"), and CITY OF MESQUITE, a Texas home rule municipality ("**City**"). The Developer, Tract D Developer, and City are hereinafter sometimes referred to as a "**Party**" and sometimes collectively referred to as the "**Parties**".

#### RECITALS:

WHEREAS, the Parties entered into that certain Master Development Agreement and Chapter 380 Agreement dated effective as of May 26, 2021 (the "**MDA**"), pursuant to which to incentive the development of certain real property located within the boundaries of the City, the City provided certain grants and options to purchase property and Developer agreed to construct certain "Common Public Improvements" and improvements within such real property; and

WHEREAS, pursuant to Section 7.10 of the MDA, on September 1, 2021 Developer delivered a Notice of Exercise of Purchase Option for the First Purchase Option for Tract B (the "**First Purchase Option Notice**") and identified Alcott Logistics Station Tract B, LP, a Delaware limited partnership ("**Tract B Developer**"), as a Developer Subsidiary designated for the acquisition and development of Tract B in accordance with the terms of the MDA, such acquisition which is planned to close on or before October 1, 2021;

WHEREAS, pursuant to Section 7.10 of the MDA, on September 1, 2021 Developer delivered a Request for Early Exercise of Second Purchase Option and Notice of Exercise of Purchase Option for the Second Purchase Option for Tract C (the "**Second Purchase Option Notice**") and identified an affiliate of Jackson-Shaw Company, a Texas corporation, or its permitted assignee ("**Tract C Third-Party Developer**"), as a Third Party Developer for the acquisition and development of Tract C in accordance with the terms of the MDA, such acquisition which is planned to close on or before December 30, 2021 and such early exercise of the Second Purchase Option requires the approval of the City Manager under Section 7.08 of the MDA with respect to waiving the Conditions Precedent to Second Purchase Option listed in Sections 7.07(D), (E), and (F) of the MDA;

WHEREAS, Parties desire to (i) confirm receipt of the First Purchase Option Notice, Request for Early Exercise of Second Purchase Option and Second Purchase Option Notice and confirm the use of certain defined terms in the MDA; (ii) confirm the Persons who will undertake and complete the Common Public Improvements and acknowledge certain step-in rights in favor of Developer, Tract D Developer, Tract B Developer, and Tract C Third-Party Developer; and (iii) modify the certain provisions of the First Option Tract Grant Additional Conditions Precedent and the Second Option Tract Grant Additional Conditions Precedent to reflect the sequencing and construction of the Buildings on Tract B, Tract C, and Tract D.

NOW, THEREFORE, for and in consideration of the mutual premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, the Parties do hereby agree as follows:

1. Recitals. The Recitals set forth at the beginning of this Amendment are hereby incorporated into this Amendment as if the same were restated here in full.

2. Defined Terms. Terms not otherwise defined herein shall have the meaning set forth in the MDA.

3. Acknowledgement of Notice of Exercise of Purchase Options. City hereby acknowledges receipt of the First Purchase Option Notice, Request for Early Exercise of Second Purchase Option and the Second Purchase Option Notice, and a copy of the purchase and sale agreement by and between Developer and Tract C Third-Party Developer in accordance with Section 7.02(D)(ii) of the MDA (the "**Tract C Purchase Agreement**"). In accordance with Section 7.08 of the MDA, City ratifies and confirms the City Manager's waiver of the Conditions Precedent to the "Second Purchase Option set forth in Sections 7.07(D), (E), and (F) of the MDA. From and after the date Tract B Developer closes on the acquisition of Tract B as the First Option Tract, as used in the MDA, (i) the "First Option Tract" shall refer to Tract B and the "Second Option Tract" shall refer to Tract C, and (ii) the Building constructed on Tract D shall refer to "Building 1", the Building constructed on Tract B shall refer to "Building 2" and the Building constructed on Tract C shall refer to "Building 3".

4. Tract B Purchase Price; Tract C Purchase Price. City acknowledges and agrees that (i) the Tract B Purchase Price is \$907,862.40, and (ii) the Tract C Purchase Price is \$941,647.20. The foregoing purchase prices are hereby determined by the City to be the Fair Market Value of Tract B and Tract C, respectively, through December 31, 2021. In the event Developer timely delivers a Notice of Termination of Exercise of Purchase Option with respect to the First Option Tract or Second Option Tract, City reserves the right to determine the Fair Market Value of Tract B and/or Tract C, as applicable, in accordance with Section 7.09 of the MDA.

5. Performance of Common Public Improvements Work.

(a) The Parties acknowledge that Tract D Developer is the Party to the MDA that is required to cause the Common Public Improvements to be commenced and completed in accordance with the terms of the MDA and that performance of such obligations is secured by the Performance Deed of Trust. While remaining responsible for the timely performance of these obligations, Tract D Developer has elected to (i) self-perform and complete the Common Public Improvements related to the realignment of East Glen Boulevard described on Schedule 1 as the "**East Glen CPI Work**", (ii) enter an agreement with Tract C Third-Party Developer to undertake and complete the Common Public Improvements described on Schedule 1 as the "**Tract C Third-Party Developer CPI Work**", and (iii) self-perform and complete the remainder of Common Public Improvements described on Schedule 1 as the "**Tract D Developer CPI Work**," all such Common Public Improvements which will be completed in accordance with the terms of the MDA. Except as provided herein, Tract D Developer retains the right to receive any and all reimbursements for the Common Public Improvements under the terms of the MDA and TIRZ Reimbursement Agreement. Notwithstanding anything contained herein, the Tract D Developer remains the Party responsible for ensuring the Common Public Improvements are constructed in accordance with terms and provisions of the MDA including, but not limited to, Section 8.06 of the MDA.

(b) City acknowledges that under the terms of the Tract C Purchase Agreement the Tract C Third-Party Developer has the right (but not the obligation) to complete the East Glen CPI Work in the event Developer fails to timely complete the East Glen CPI Work, as determined in accordance with the definition of Complete Construction of the Common Public Improvements as it relates to the East Glen CPI Work. In the event Tract C Third-Party Developer provides written notice to the City that it has elected to complete the East Glen CPI Work and (i) completes the East Glen CPI Work (as determined in accordance with the definition of Complete Construction of the Common Public Improvements as it relates to the East Glen CPI Work), (ii) completes the Tract C Third-Party Developer CPI Work (as determined in accordance with the definition of Complete Construction of the Common Public Improvements as it relates

to the Tract C Third-Party Developer CPI Work), (iii) causes Completion of Construction of Building 3 consisting of a minimum of 300,000 square feet on Tract C within twenty four (24) months of the commencement of construction of Building 3 (such commencement of construction shall be evidenced by (a) the Plans and Specifications for the Building have been prepared and all approvals thereof required by applicable Governmental Authorities have been obtained for the construction of Building 3, and (b) the Grading Permit necessary for the initiation of construction of Building 3 has been issued by the City), (iv) landscaping has been installed on Tract C in compliance with the Landscaping Requirements and Building 3 has been constructed in compliance with the Plans and Specifications approved in writing by the City and in compliance with the PD, the Concept Plan, the Development Standards, the Architectural Standards, the CC&Rs, and all City Regulations, all as otherwise in accordance with the terms of the MDA, and (v) has timely paid all Development Fees due for the foregoing and is current on any taxes owed to the City, then the City will reimburse the Tract C Third-Party Developer instead of reimbursing the Developer for the Common Public Improvement Project Costs associated with the East Glen CPI Work performed by the Tract C Third-Party Developer (the “**East Glen CPI Work Costs**”) (the foregoing conditions, being the “**East Glen CPI Work Reimbursement Conditions**”). In such event, the Tract C Third-Party Developer shall be entitled to receive City Increment from the TIRZ Alcott Subaccount to reimburse Tract C Third-Party Developer up to the amount of the East Glen CPI Work Costs in accordance with Section 5(c).

(c) If the East Glen CPI Work Reimbursement Conditions have been satisfied and subject to the terms and conditions between the City and Tract C Third-Party Developer, then Tract C Third-Party Developer shall be reimbursed for the East Glen CPI Work Costs (the “**East Glen CPI Work Reimbursement**”) as follows from City Increment that would otherwise be paid to Tract D Developer under the terms of the MDA and TIRZ Reimbursement Agreement:

(i) First, from one hundred percent (100%) of the City Increment deposited into the TIRZ Alcott Subaccount related to Tract C; and

(ii) Second, (A) if Tract D Developer has not satisfied the conditions precedent set forth in the MDA or TIRZ Reimbursement Agreement for reimbursement of Common Public Improvement Project Costs, from one hundred percent (100%) of the City Increment deposited into the TIRZ Alcott Subaccount; or (b) if Tract D Developer has satisfied the conditions precedent set forth in the MDA and TIRZ Reimbursement Agreement for reimbursement of Common Public Improvement Costs, a percentage equal to the ratio of East Glen CPI Work Costs incurred by Tract C Third-Party Developer to the Common Public Improvement Cost incurred by Tract D Developer multiplied by the City Increment deposited into the TIRZ Alcott Subaccount.

The Tract D Developer agrees and acknowledges that, notwithstanding anything to the contrary in the TIRZ Reimbursement Agreement, any amount paid pursuant to this paragraph 5(c), shall be included in the calculation of the Reimbursement Cap (as defined in the TIRZ Reimbursement Agreement) of NINE MILLION THREE HUNDRED THOUSAND AND NO/100 DOLLARS (\$9,300,000.00).

(d) Regardless of whether the Tract D Developer CPI Work is completed and in the event Tract C Third-Party Developer satisfies the East Glen CPI Work Reimbursement Conditions, and subject to satisfaction of the terms and conditions of this Amendment, the Tract C Third-Party Developer shall be entitled to receive the East Glen CPI Work Reimbursement limited to amounts available from the City Increment deposited into the TIRZ Alcott Subaccount and subject to the procedures and limitations provided in the TIRZ Reimbursement Agreement as modified by this Amendment.



(e) Tract C Third-Party Developer is hereby designated as an intended third party beneficiary of this Section 5 and is designated as an Approved Assignee under the MDA and the TIRZ Reimbursement Agreement solely with respect to receipt of the East Glen CPI Work Reimbursement. No party may amend the MDA or the TIRZ Reimbursement Agreement in a manner that impacts the Tract C Third-Party Developer rights under this Amendment without the consent of the Tract C Third-Party Developer. In addition any amendment affecting the East Glen CPI Work Costs, East Glen CPI Work Reimbursement Conditions or East Glen CPI Work Reimbursement requires the consent of the Tract C Third Party Developer.

(f) This Section 5 shall automatically terminate and be of no further force and effect if Developer timely delivers Notice of Termination of Exercise of Purchase Option with respect to the Second Option Tract.

6. Modification of First Option Tract Grant Additional Conditions Precedent. Section 9.01(C)(6) is hereby deleted in its entirety and replaced with the following:

“6. Construction of Building 1. (i) Commencement of Construction of Building 1 shall have occurred on or before the Building 1 Commencement Deadline Date; (ii) the Landscaping Requirements shall have been satisfied with respect to the Tract where Building 1 is being constructed; (iii) Completion of Construction of Building 1 shall have occurred on or before the Building 1 Completion Date; and (iv) Building 1 shall have been constructed in compliance with the Plans and Specifications approved in writing by the City and in compliance with the PD, the Concept Plan, the Development Standards, the Architectural Standards, the CC&Rs and all City Regulations.”

7. Modification of Second Option Tract Grant Additional Conditions Precedent. Section 9.01(D)(8) is hereby deleted in its entirety and replaced with the following:

“8. Construction of Building 2. (i) Commencement of Construction of Building 2 shall have occurred on or before the Building 2 Commencement Deadline Date; (ii) the Landscaping Requirements shall have been satisfied with respect to the Tract where Building 2 is being constructed; (iii) Completion of Construction of Building 2 shall have occurred on or before the Building 2 Completion Date; and (iv) Building 2 shall have been constructed in compliance with the Plans and Specifications approved in writing by the City and in compliance with the PD, the Concept Plan, the Development Standards, the Architectural Standards, the CC&Rs and all City Regulations.

9. Grading Permit for Tract C. City shall have issued the Grading Permit necessary for the initiation of construction of a Building on Tract C.”

8. Effectiveness. Except as amended by this Amendment, the terms and provisions of the MDA and TIRZ Reimbursement Agreement shall remain unchanged and are in full force and effect as written, and the MDA and TIRZ Reimbursement Agreement, as amended by this Amendment, is hereby ratified and confirmed in all respects by the parties hereto. The Performance Deed of Trust is unchanged by this Amendment and remains in full force and effect as written.

9. Severability. The sections, paragraphs, sentences, clauses, and phrases of this Amendment are severable and, if any phrase, clause, sentence, paragraph, or section of this Amendment should be declared invalid, illegal or unenforceable by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect the validity or enforceability of any of the remaining phrases,

clauses, sentences, paragraphs, and sections of this Amendment and such remaining provisions shall remain in full force and effect and shall be construed and enforced as if the invalid provision had never been included in this Amendment.

10. Authority. The Developer represents that it is duly formed, validly existing and in good standing under the laws of the State of its formation and is duly authorized to transact business in the State of Texas. The Developer represents that it has the full power and authority to enter into and fulfill its obligations under this Amendment and that the Person signing this Amendment on behalf of the Developer has the authority to sign this Amendment on behalf of the Developer. The Tract D Developer represents that it is duly formed, validly existing and in good standing under the laws of the State of its formation and is duly authorized to transact business in the State of Texas. The Tract D Developer represents that it has the full power and authority to enter into and fulfill its obligations under this Amendment and that the Person signing this Amendment on behalf of the Tract D Developer has the authority to sign this Amendment on behalf of the Tract D Developer.

11. City Council Authorization. This Amendment was authorized by resolution of the City Council approved at a City Council meeting where a quorum was present and in compliance with the Texas Open Meetings Act.

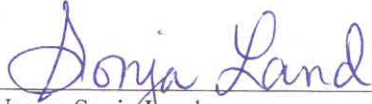
12. Counterparts. This Amendment may be executed, acknowledged and delivered in any number of counterparts and each such counterpart shall constitute an original, but together such counterparts shall constitute only one instrument. The signatures to this Amendment may be executed on separate pages and when attached to this Amendment shall constitute one (1) complete document.

*[Remainder of page intentionally left blank; Signature pages follow]*

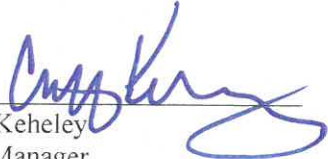
**CITY:**

**CITY OF MESQUITE, TEXAS**

ATTEST:

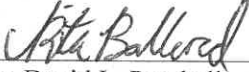


Name: Sonja Land  
Title: City Secretary

By:   
Name: Cliff Keheley  
Title: City Manager

Executed this 8 day of Oct. 2021

APPROVED AS TO LEGAL FORM:



Name: David L. Paschall  
Title: City Attorney

**DEVELOPER:**

ALCOTT LOGISTICS PARTNERS, LP,  
a Texas limited partnership

By: Alcott Logistics Partners GP, LLC,  
a Texas limited liability company,  
Its general partner

By: Urban Logistics Realty, LLC,  
a Texas limited liability company,  
Its Manager

By:   
Name: Adam Herrin  
Title: Manager

**TRACT D DEVELOPER:**

ALCOTT LOGISTICS STATION TRACT D, LP,  
a Delaware limited partnership

By: Alcott Logistics Station Tract D GP, LLC,  
a Texas limited liability company,  
Its general partner

By: Urban Logistics Realty, LLC,  
a Texas limited liability company,  
Its Manager

By:   
Name: Adam Herrin  
Title: Manager

## Schedule 1

### Description of Common Public Improvements

#### East Glen CPI Work

- East Glen Removal except for Tract C and Tract D
- East Glen Realignment (paving, water line and drainage except for water line and drainage located on Tract C)

#### Tract C Third-Party Work

- East Glen Removal for Tract C
- East Glen Realignment (water line and drainage located on Tract C)
- Trail, Mass Grading, Storm Drainage and Detention, and Landscaping/Irrigation on Tract C

#### Tract D CPI Work

- Storm Drainage and Detention except for Tract C
- Franchise Utilities
- Mass Grading except for Tract C
- Trail except for Tract C
- Park
- Landscaping / Irrigation except for Tract C
- Monument / Wayfinding Signage
- East Glen Removal for Tract D