

RESOLUTION NO. 08-2023

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, AUTHORIZING THE CITY MANAGER TO FINALIZE AND EXECUTE A SECOND 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 RELEASE OF A PERFORMANCE DEED OF TRUST; 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 (the “City Council”), 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 (collectively the “**Developer**”), 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, on September 20, 2021, the City Council adopted Resolution No. 60-2021, approving the First Amendment to the Agreement 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, the City Council has been presented with a Second Amendment to the Agreement (“**Second Amendment**”) providing for the early release of a Performance Deed of Trust in favor of the City and filed against Tract D of Alcott Logistics Station; and

WHEREAS, the Developer will have all of the Common Public Improvements, as defined in the Agreement, completed prior to release of the Performance Deed of Trust excepting only certain improvements relating to the park site of Alcott Logistics Station; and

WHEREAS, the Developer shall not receive any grant under the Agreement, including any reimbursement from TIRZ No. 14, until all of the Common Public Improvements are completed, including the park site, and the Developer must still complete all of the Common Public Improvements, including the park site, on or before the deadline provided in the Agreement.

WHEREAS, after conducting a public hearing and upon full review and consideration of the Agreement and Second 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 Second Amendment is in the best interest of the City and will benefit the City and its citizens.

Eco Dev / Second Amendment to Alcott Master Development Agreement

March 6, 2023

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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 Second 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 Second Amendment substantially in the form attached as Exhibit 1 and hereby authorizes the City Manager to: (i) finalize and execute the Second Amendment; and (ii) take such actions and execute such documents as are necessary or advisable to consummate the transactions contemplated by the Second Amendment, including execution of Exhibit R thereto titled Release of Lien.

SECTION 4. That the City Manager is further hereby authorized to administer the Second 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 Second Amendment; (ii) approve amendments to the Second Amendment provided such amendments, together with all previous amendments approved by the City Manager, do not increase City expenditures under the Second Amendment and Agreement in excess of \$50,000; (iii) approve or deny any matter in the Second Amendment that requires the consent of the City provided, however, notwithstanding the foregoing, any assignment of the Second Amendment that requires the consent of the City pursuant to the terms of the Second 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 Second Amendment; (v) exercise any rights and remedies available to the City under the Second 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.

Eco Dev / Second Amendment to Alcott Master Development Agreement

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DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 6th day of March 2023.

DocuSigned by:

Daniel Aleman Jr.

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Daniel Alemán, Jr.
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

DocuSigned by:

Sonja Land

C2518095973F46A...

Sonja Land
City Secretary

DocuSigned by:

David Paschall

666E18891208434...

David L. Paschall
City Attorney

EXHIBIT 1

SECOND 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: March 6, 2023

This SECOND AMENDMENT TO MASTER DEVELOPMENT AGREEMENT AND CHAPTER 380 AGREEMENT (this "**Amendment**") is executed effective as of the 6th day of March, 2023 (the "**Amendment Date**"), 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, as amended by that certain First Amendment to Master Development Agreement and Chapter 380 Agreement dated effective as of September 20, 2021 (as amended, the "**MDA**"), to incentivize the development of certain real property located within the boundaries of the City and described in the MDA (the "**Property**"); and

WHEREAS, the Property is located within Reinvestment Zone Number Fourteen, City of Mesquite, Texas (Alcott Logistics Station) (the "**TIRZ**"); and

WHEREAS, to facilitate and maximize the development of the Property to its greatest potential, the Developer and Tract D Developer agreed, among other things, to construct certain public infrastructure and public improvements to benefit the public and development of the Property as more fully described in Exhibit C to the MDA (collectively the "**Common Public Improvements**"); and

WHEREAS, pursuant to Section 6.08 of the MDA and, in part, to secure Completion of Construction of the Common Public Improvements, Tract D Developer executed and delivered to the City a Performance Deed of Trust at the Tract D Closing which is recorded as Document Number 202100227579 in the Official Public Records of Dallas County, Texas;

WHEREAS, effective as of May 26, 2021, the City, TIRZ Board and Tract D Developer entered into a Reimbursement Agreement ("**Reimbursement Agreement**") under which the Tract D Developer may be reimbursed for costs of the Common Public Improvements from the TIRZ Revenues; and

WHEREAS, the Tract D Developer warrants and represents that on the Closing Date under the Purchase Agreement (defined below), which, as of the Amendment Date, is scheduled to occur on or before April 30, 2023, Tract D Developer will, or will cause, the Completion of Construction of the Common Public Improvements with the exception of (i) certain playground equipment to be installed in connection with the park, and (ii) other ancillary and minor improvements, all as more particularly described in Exhibit Q hereto (collectively, the "**Outstanding CPI Work**"); and

WHEREAS, the Tract D Developer warrants, represents and reaffirms that Completion of Construction of the Common Public Improvements, including the Outstanding CPI Work, shall have occurred on or before the Common Public Improvements Completion Date and that such occurrence is a condition precedent to the Tract D Developer obtaining reimbursement for any cost under the Reimbursement Agreement; and

WHEREAS, the Parties acknowledge that, pursuant to Section 3.01(a)(9)(B) of that certain Purchase and Sale Agreement dated as of October 25, 2021 (as amended, the "**Purchase Agreement**") by and between Tract D Developer, as seller, and BDPF ALCOTT LOGISTICS LP, a Delaware limited partnership, as buyer ("**Buyer**"), Buyer's obligation to consummate Closing (as defined in the Purchase

Agreement) is subject to Tract D Developer obtaining a release of the Performance Deed of Trust such that the Performance Deed of Trust is removed from title to the Property at Closing;

WHEREAS, upon request of Developer and Tract D Developer and as of the Amendment Date, based on the terms of the MDA as modified by this Amendment and the terms of the Reimbursement Agreement, and based on the status of and progress towards the Completion of Construction of the Common Public Improvements, the City is willing to release the Performance Deed of Trust; and

WHEREAS, the City intends to release the Performance Deed of Trust and amend the MDA, as provided herein.

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 and Exhibits. Terms not otherwise defined herein shall have the meaning set forth in the MDA and Reimbursement Agreement, as applicable. Exhibits Q and R attached hereto are incorporated herein by reference.
3. Release of Performance Deed of Trust.

(a) The Developer and the Tract D Developer agree that on or before the Closing Date under the Purchase Agreement, the Tract D Developer will cause the completion of all Common Public Improvements with the exception of the Outstanding CPI Work identified in Exhibit Q hereto. Notwithstanding the foregoing, the Tract D Developer reaffirms its obligations under the MDA to Complete Construction of the Common Public Improvements, including but not limited to the Outstanding CPI Work, on or before the Common Public Improvements Completion Date. The Tract D Developer further reaffirms its obligations to perform the Conditions Precedent to Reimbursement Payments provided in Section 3.09 of the Reimbursement Agreement, including but not limited to the condition stated in Section 3.09(B) which includes, notwithstanding any provision of this Amendment, the completion of the Outstanding CPI work on or before the Common Public Improvements Completion Date, prior to entitlement to any reimbursement for any costs under the Reimbursement Agreement.

(b) Notwithstanding the fact that Tract D Developer has not caused the Completion of Construction of the Common Public Improvements to occur as of the Amendment Date and upon consideration of other factors identified herein, including the status of and progress towards the Completion of Construction of the Common Public Improvements, the City agrees to release the Performance Deed of Trust. Notwithstanding anything in the MDA or the Reimbursement Agreement to the contrary, the City hereby agrees to execute and deliver to Tract D Developer, at the cost and expense of Tract D Developer, a release of the Performance Deed of Trust in substantially the form attached hereto as Exhibit R within ten (10) days following Tract D Developer's submission of such release of the Performance Deed of Trust to the City. Following the City's execution of such release, Tract D Developer may record such release in the Real Property Records of Dallas County, Texas, such that the Performance Deed of Trust is removed from title to the Property at or prior to Closing. Notwithstanding the foregoing, the Parties acknowledge and agree that (i) Tract D Developer shall remain responsible for satisfying all obligations imposed on it in the MDA including, but not limited to, Section 6.08 of the MDA except as modified herein, and (ii) all payments from the City to the Developer and/or Tract D Developer under the terms of the Reimbursement

Agreement and MDA are expressly conditioned on Developer's and/or Tract D Developer's satisfaction of the conditions set forth in Section 12.10 of the MDA and Section 3.09 of the Reimbursement Agreement.

4. Effectiveness. Except as amended by this Amendment, the terms and provisions of the MDA and Reimbursement Agreement shall remain unchanged and are in full force and effect as written, and the MDA, as amended by this Amendment, and Reimbursement Agreement are hereby ratified and confirmed in all respects by the Parties hereto. This Amendment together with the MDA and Reimbursement Agreement shall constitute the entire agreement between the Parties and supersedes all prior agreements and understandings, whether oral or written, concerning the subject matter of this Amendment, the MDA and the Reimbursement Agreement. This Amendment, the MDA and the Reimbursement Agreement shall not be modified or amended except in writing signed by the Parties.

5. 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.

6. 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.

7. 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.

8. 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:  DS

DocuSigned by:
Sonja Land
Name: Sonja Land
Title: City Secretary

DocuSigned by:
Cliff Keheley
By: _____
Name: Cliff Keheley
Title: City Manager

Executed this 3/8/2023 day of _____, 2023

APPROVED AS TO LEGAL FORM:

DocuSigned by:
David Paschall
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

DocuSigned by:
By: Adam Herrin
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

DocuSigned by:
By: Adam Herrin
Name: Adam Herrin
Title: Manager

EXHIBIT Q
OUTSTANDING CPI WORK

The completed Outstanding CPI Work shall conform to the design and construction plans attached as Schedule 1 (“Park Plans”) to the June 15, 2022 approval letter between the Tract D Developer and City, made pursuant to Section 11.01(A) of the MDA, which the Parties hereby reaffirm, and includes the following elements. Neither this Exhibit Q nor this Amendment modify the Park Plans in any manner.

1. Playground and Fitness equipment
2. Water fountain
3. Custom Signage
4. Punch list items

EXHIBIT R

RECORDING REQUESTED BY
AND WHEN RECORDED PLEASE
RETURN TO:

Munsch, Hardt, Kopf & Harr, P.C.
500 N. Akard Street, Suite 3800
Dallas, TX 75201
Attention: Mr. Ian Fairchild

RELEASE OF LIEN

THIS RELEASE OF LIEN (this "**Release**") is made as of _____, 2023, by CITY OF MESQUITE, a Texas home rule municipality located in Dallas and Kaufman Counties, Texas ("**Beneficiary**"), having an address of 1515 N. Galloway, Mesquite, Texas 75149. Beneficiary hereby releases the Property described below from the following instruments:

Deed of Trust, Assignment of Rents, Security Agreements and Fixture Filing to Secure Payment and Performance of Secured Obligations dated July 29, 2021, made by Seller, as grantor, to David Paschall, as trustee, for the benefit of the City of Mesquite, recorded on July 30, 2021, under Instrument No. 202100227579, Official Public Records, Dallas County, Texas, in performance of the obligations as described therein.

Property to Be Released pursuant to this Release ("Property"): The real property legally described on **Exhibit "A"** attached hereto and incorporated by this reference.

FOR TEN DOLLARS and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, Beneficiary by these presents, hereby releases and discharges the Property from the liens aforementioned and described in the Official Public Records, Dallas County, Texas, which has arisen, or may arise, for the benefit of Beneficiary because of work performed or materials furnished under the Deed of Trust, Assignment of Rents, Security Agreements and Fixture Filing to Secure Payment and Performance of Secured Obligations or otherwise related to or in connection with the Property. Reference is hereby specifically made to all instruments and records herein mentioned, and to all those referred to in all said instruments, for all purposes.

When the context requires, singular nouns and pronouns include the plural.

[Remainder of page intentionally left blank; signature page follows.]

IN WITNESS WHEREOF, the undersigned Beneficiary has caused this Release to be executed as of the date first set forth above.

CITY:

CITY OF MESQUITE, TEXAS

ATTEST:

Name: Sonja Land
Title: City Secretary

By: _____
Name: Cliff Keheley
Title: City Manager

Executed this ____ day of _____, 2023

APPROVED AS TO LEGAL FORM:

Name: David L. Paschall
Title: City Attorney

THE STATE OF TEXAS

§

COUNTY OF DALLAS

§

§

This instrument was acknowledged before me on the ____ day of _____, 2023, by Cliff Keheley, as City Manager of CITY OF MESQUITE, a Texas home rule municipality located in Dallas and Kaufman Counties, Texas, on behalf of said municipality.

Notary Public – State of Texas

My Commission Expires:

EXHIBIT A

LEGAL DESCRIPTION

BEING an 32.34 acre tract of land situated in the James M. Sewell Survey, Abstract Number 1358 in the City of Mesquite, Dallas County, Texas, and being part of a called 50.67364 acre tract of land described as "Tract 2" and part of a called 23.03668 acre tract of land described as "Tract 3" in General Warranty Deed to City of Mesquite, as recorded in Volume 95083, Page 253 of the Deed Records of Dallas County, Texas (D.R.D.C.T.), and part of a called 6.73 acre tract of land described as "Tract 1" in Quitclaim Deed to City of Mesquite, as recorded in Instrument Number 202100054586 of the Official Public Records of Dallas County, Texas (O.P.R.D.C.T.), and being more particularly described as follows:

BEGINNING at a 1/2-inch set iron rod with yellow plastic cap stamped "HALFF" (hereinafter referred to as "with HALFF cap") for the southeast corner of a called 2.52 acre tract of land described in Right-Of-Way Dedication to City of Mesquite, as recorded in Instrument Number 202100173210, O.P.R.D.C.T., said corner being on the south right-of-way line of E. Scyene Road (a variable width right-of-way) and the east line of said 50.67364 acre tract;

THENCE South 00 degrees 00 minutes 46 seconds East, with the east line of said 50.67364 acre tract, passing at a distance of 616.50 feet the southeast corner of said 50.67364 acre tract and the northeast corner of the aforementioned 6.73 acre tract and the northwest corner of a called 1.845 acre tract of land described in Quitclaim Deed to City of Mesquite, as recorded in Instrument Number 202100054586, and continuing with the common line of said 6.73 acre tract and the 1.845 acre tract, passing at a distance of 716.50 feet the southeast corner of said 6.73 acre tract, the southwest corner of said 1.845 acre tract, and the northeast corner of the aforementioned 23.03668 acre tract, and continuing with the east line of said 23.03668 acre tract, in all a total distance of 1,416.70 feet to a 1/2-inch set iron rod with HALFF cap for corner, said corner being the southeast corner of said 23.03668 acre tract and on the north right-of-way line of Newsome Road (a variable width right-of-way);

THENCE South 89 degrees 20 minutes 49 seconds West, with the south line of said 23.03668 acre tract and the north right-of-way line of said Newsome Road, a distance of 919.27 feet to a 1/2-inch set iron rod with HALFF cap for a corner, said corner being on the southwest line of said 23.03668 acre tract and the northeast line of a called 42,901 square foot tract of land described in Special Warranty Deed to City of Mesquite, Texas, as recorded in Volume 2001166, Page 93, D.R.D.C.T.;

THENCE North 78 degrees 29 minutes 36 seconds West, departing said north right-of-way line, and with the south line of said 23.03668 acre tract and the northeast line of said 42,901 square foot tract, a distance of 32.12 feet to a 1/2-inch set iron rod with HALFF cap for corner;

THENCE North 00 degrees 41 minutes 47 seconds West, departing said north and south lines, and over and across said 23.03668 acre tract, passing at a distance of 692.65 feet the north line of said 23.03668 acre tract and the south line of the aforementioned 6.73 acre tract, and continuing over and across said 6.73 acre tract, passing at a distance of 792.65 feet the north line of said 6.73 acre tract and the south line of the aforementioned 50.67364 acre tract, and continuing over and across said 50.67364 acre tract, in all a total distance of 1,513.58 feet to a 1/2-inch set iron rod with HALFF cap for corner, said corner being on the south right-of-way line of the aforementioned E. Scyene Road;

THENCE South 84 degrees 32 minutes 03 seconds East, with the south right-of-way line of said E. Scyene Road, a distance of 973.19 feet to the POINT OF BEGINNING AND CONTAINING 32.34 acres (1,408,765 square feet) of land, more or less.