

CHAPTER 380 ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

As of June 11, 2024 (the “Effective Date”) this agreement (the “Agreement”) is entered into between the City of San Marcos, Texas (the “City”), a Texas municipal corporation, and BRE Group 500 Wonder World 2022 LP, a Texas limited partnership (“Developer”). The City and Developer may also be collectively referred to as the “Parties” or, individually, as a “Party.”

PART 1. RECITALS

Section 1.01. The City seeks to attract and retain a diverse range of businesses that provide well-paying jobs necessary for economic stability and growth.

Section 1.02. Developer proposes to construct a 98,296 square foot distribution facility located at 500 Wonderworld Dr West of I-35 South. Developer seeks an economic development incentive from the City for the construction of such facilities.

Section 1.03. The City believes that the availability of such space will be in furtherance of the City’s job creation and economic development goals and wishes to provide an incentive to Developer for the construction of the facilities.

Section 1.04. The City is authorized under Chapter 380 of the Texas Local Government Code (“Chapter 380”) to offer certain economic development incentives for public purposes, including the promotion of local economic development and the stimulation of business and commercial activity in the City. Providing an incentive to Developer under the terms and conditions of this Agreement is consistent with the public purposes of Chapter 380 and the economic development objectives of the City.

Section 1.05. For the reasons stated in these Recitals and in consideration of the mutual benefits to and promises of the Parties set forth below, the Parties want to enter into this Agreement and agree to the terms and conditions set forth in this Agreement.

ARTICLE II

DEFINITIONS

Section 2.01. “Building Improvements” means at least a 98,296 square foot distribution facility located on the Land (defined below) with a minimum capital investment of \$16.45 million. The Building Improvements shall be constructed in substantial accordance with the site plan and images shown in Exhibit “A,” attached hereto and made a part hereof for all purposes. Notwithstanding the foregoing, the City Manager of the City, or her designee, may approve modifications to the specifications for the Building Improvements necessary for the Building Improvements to comply with applicable building codes and ordinances. City will waive the sidewalk construction requirement and fee-in-lieu, subject to developer financing pedestrian access abatement (fences, gates) to the City Police Firing Range.

Section 2.02. “Grant Payments” means the City’s annual payments to the Developer for a period of three years during the Term of amounts equal to a percentage of Real Property Taxes paid by Developer and received by the City in the manner provided in this Agreement below.

Section 2.03. “Land” means the tract(s) of real property and improvements thereon, as shown in the survey in Exhibit “B,” attached hereto and made a part hereof upon which the Building Improvements will be constructed.

Section 2.04. “Real Property Taxes” in any given year during the Term of this Agreement means those ad valorem taxes assessed and collected by the City on the Land that are attributable solely to the Building Improvements.

Section 2.05. “Tax Office” means the Hays County Tax Assessor-Collector.

Section 2.06. The “Term” of this Agreement shall commence on the Effective Date and continue until the date that the third Grant Payment is due and finally paid, or such earlier date of termination as provided under this Agreement. The Developer shall have one (1) year from the

commencement date to complete construction as set forth in Section 3.01. The commencement date is the day construction is started, to occur no later than October 31, 2024.

ARTICLE III DEVELOPER'S OBLIGATIONS

Section 3.01. Construction of Building Improvements. Developer shall construct to completion the Building Improvements according to the schedule set forth in Section 2.06, subject to any extensions approved by the City Manager of the City, or her designee, due to events of *force majeure*. For purposes of this Agreement, the date of completion of construction shall be the date on which the certificate of substantial completion is issued by the City.

Section 3.02. Marketing. The Developer will use commercially reasonable and diligent efforts to advertise and market the Building Improvements for lease.

Section 3.03. Compliance with Laws. The Developer will comply with all applicable ordinances, statutes, laws and regulations in connection with completing the building improvements.

ARTICLE IV GRANT PAYMENTS FROM THE CITY

Section 4.01. Three-Year Payment Period. Upon Developer's satisfactory completion of the Building Improvements, Developer shall be eligible to receive up to three Grant Payments from the City as follows (as further outlined in Section 4.03):

- a. an amount equal to 100 percent of Real Property Taxes paid to and received by the City in the first full calendar year after the Building Improvements are completed;
- b. an amount equal to 75 percent of Real Property Taxes paid to and received by the City for the second calendar year thereafter; and
- c. an amount equal to 50 percent of Real Property Taxes paid to and received by the City for the third calendar year thereafter.

For example, if the Building Improvements are completed in 2025, the full assessed value for the completed Building Improvements will not be recognized until January 1, 2026. Since 2026 would be considered the first full calendar year after the Building Improvements are completed, the first Grant Payment would, therefore, be calculated based upon Real Property Taxes assessed in 2026 and would be paid in 2027.

Section 4.02. Time for Payment. Grant Payments will be made by the City on or before March 31 of the calendar year immediately following the year in which the Real Property Taxes upon which the Grant Payment amount is based are assessed. Following the example in Section 4.01, therefore, a Grant Payment that is based on the Real Property Taxes collected in 2026 for the year 2025 and would be paid by the City on or before March 31, 2027. Notwithstanding the foregoing, the City shall not be required to make a Grant Payment during any applicable year unless and until:

- a. the Real Property Taxes for the prior year are received by the City from the Tax Office;
- b. funds equivalent in value to the applicable Grant Payment amount are appropriated for the specific purpose of making a Grant Payment as part of the City's ordinary budget and appropriations approval process; and
- c. the Developer has submitted all information required under this Agreement necessary to verify its compliance.

Section 4.03. Grant Payments Paid Unless Buildings Leased. If during the Term of this agreement a portion of the Building Improvements become leased, the Grant Payment owed by the City for that calendar year shall be reduced by a percentage equal to the proportion of the Building Improvements that are leased. For instance, if in year two (2) of the Agreement the Building Improvements became 50% leased, the Developer could request a Grant Payment equal

to 50% of the Real Property Taxes paid to and received by the City for that calendar year. In effect, all Grant Payments by the City to the Developer shall be for the unleased portion of the Building Improvements subject to the maximum grant amount for each year of the agreement Term.

ARTICLE V REPRESENTATIONS AND WARRANTIES OF DEVELOPER

As of the Effective Date, the Developer represents and warrants to the City, as follows:

Section 5.01. Organization. The Developer is a limited partnership, duly organized, validly existing and in good standing under the laws of the State of Texas and authorized to conduct business in the State of Texas. The obligations of Developer under this Agreement may lawfully be conducted by the Developer.

Section 5.02. Authority. The execution, delivery and performance by the Developer of this Agreement are within the Developer's powers and have been duly authorized by all necessary action of the Developer.

Section 5.03. No Conflicts. Neither the execution and delivery of this Agreement, nor the consummation of any of the transactions herein contemplated, nor compliance with the terms and provisions hereof will contravene the organizational documents of the Developer or, to Developer's actual knowledge, any provision of law, statute, rule or regulation to which the Developer is subject or any judgment, decree, license, order or permit applicable to the Developer, or will conflict or be inconsistent with, or will result in a material breach of any of the material terms of the covenants, conditions or provisions of, or constitute a delay under, or result in the creation or imposition of a lien upon any of the property or assets of the Developer pursuant to the terms of any indenture, mortgage, deed of trust, agreement or other instrument to which the

Developer is a party or, to the knowledge of the Developer, by which the Developer is bound, or to which the Developer is subject.

Section 5.04. No Consents. No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or governmental authority or regulatory body or third party is required for the due execution, delivery and performance by the delivery of this Agreement or the consummation of the transactions contemplated hereby or thereby.

Section 5.05. Valid and Binding Obligation. This Agreement is the legal, valid and binding obligation of the Developer, enforceable against the Developer in accordance with its terms except as limited by applicable relief, liquidation, conservatorship, bankruptcy, moratorium, rearrangement, insolvency, reorganization or similar laws affecting the rights or remedies of creditors generally, as in effect from time to time.

Section 5.06. No Pending Litigation. There is no action, proceeding, inquiry or investigation, at law or in equity, before any court, arbitrator, governmental or other board or official, pending or, to the current actual knowledge of the Developer, threatened against or affecting the Developer or any subsidiaries of the Developer, questioning the validity or any action taken or to be taken by the Developer in connection with the execution, delivery and performance by the Developer of this Agreement or seeking to prohibit, restrain or enjoin the execution, delivery or performance by the Developer hereof, wherein an unfavorable decision, ruling or finding (i) would adversely affect the validity or enforceability of, or the authority or ability of the Developer to perform, its obligations under this Agreement or (ii) would have a material adverse effect on the consolidated financial condition or results of operations of the Developer or on the ability of the Developer to conduct its business as presently conducted or as proposed or contemplated to be conducted.

Section 5.07. No Defaults. The Developer is current in its obligation to pay taxes to the City, and is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which the Developer is a party or by which the Developer or any of its property is bound that would have any material adverse effect on the Developer's ability to perform under this Agreement.

Section 5.08. Full Disclosure. Neither this Agreement nor any schedule or exhibit attached hereto in connection with the negotiation of this Agreement contains any untrue statement of a material fact or omits to state any material fact necessary to keep the statements contained herein or therein, in the light of the circumstances in which they were made, from being misleading.

ARTICLE VI PERSONAL LIABILITY OF PUBLIC OFFICIALS; LIMITATIONS ON CITY OBLIGATIONS

Section 6.01. Personal Liability of Public Officials. No employee or elected official of the City shall be personally responsible for any liability arising under or growing out of this Agreement.

Section 6.02. Limitations on City Obligations. The Grant Payments made and any other financial obligation of the City hereunder shall be paid solely from lawfully available funds that have been budgeted and appropriated each year during the Term by the City as provided in this Agreement. Under no circumstances shall the City's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Consequently, notwithstanding any other provision of this Agreement, the City shall have no obligation or liability to pay any Grant Payments or other payments unless the City budgets and appropriates funds to make such payments during the City's fiscal year in which such Grant Payment(s) or other payments are payable under this Agreement.

Section 6.03. No Recourse. Developer shall have no recourse against the City for failing to budget and appropriate funds during any fiscal year to meet the purposes and obligations under this Agreement.

ARTICLE VII INFORMATION

Section 7.01 . Information. The Developer shall, at such times and in such form as City may reasonably request from the Developer, provide information concerning the performance of the Developer's obligations under this Agreement.

Section 7.02. Certification. Upon completion of the Building Improvements for each phase and before the City shall make the first Grant Payment due under this Agreement, Developer shall submit to the City a certified statement in a form reasonably acceptable to the City, signed by an authorized officer or employee of the Developer, providing the following information:

- a.** a description of the completed Building Improvements, together with a copy of the final shell building certificate of occupancy issued for each building completed for each phase;
- b.** invoices and related documentation verifying the capital investment incurred by Developer to acquire and develop the Land and construct the Building Improvements;
- c.** copies of paid invoices from the Tax Office showing the amount of Real Property Taxes paid for the preceding tax year;
- d.** a statement regarding whether and the extent to which any or all buildings as to a phase are fully leased; and

e. a statement that Developer is in full compliance with its obligations under this Agreement.

Upon receipt of any such form, the City may notify the Developer in writing of any questions that the City may have with any of the information provided by the Developer, and the Developer shall diligently work in good faith to respond to such questions to the City's reasonable satisfaction.

Section 7.03. Review of Developer Records. The Developer agrees that the City will have the right to review the business records of the Developer, as reasonably necessary, that relate to Developer's compliance with the terms of this Agreement at any reasonable time and upon at least seven days' prior notice to the Developer in order to determine compliance with this Agreement. To the extent reasonably possible, the Developer shall make all such records available in electronic form or otherwise available to be accessed through the internet.

ARTICLE VIII DEFAULT, TERMINATION AND REMEDIES

Section 8.01. Default and Termination. If the Developer is not in compliance with this Agreement and such non-compliance continues without cure for a period of ten (10) days after the City's written notice thereof to the Developer, then the City may, in its sole discretion, withhold Grant Payments that would otherwise be due to Developer for the year during which the noncompliance occurred or terminate the Agreement by providing written notice thereof to Developer. If the City elects to withhold Grant Payments for any such non-compliance, the City shall nevertheless continue Grant Payments for any subsequent years during the Term in which the Developer is complying with this Agreement; however, any Grant Payments withheld by the City for any years during which Developer is not complying shall be deemed forfeited by the Developer and the City shall not be liable for later payment of such Grant Payments.

Section 8.02. Developer's Option to Terminate. If the City fails to budget and appropriate funds for Grant Payments under this Agreement during any fiscal year of the City during the Term for reasons other than the Developer's non-compliance with this Agreement, the Developer, at its option, may terminate this Agreement by providing written notice thereof to the City. If the Developer elects to terminate the Agreement under this Section, the Developer and the City shall each be released of all further obligations under this Agreement, except that the City shall pay to the Developer any outstanding and unpaid Grant Payments properly due to the Developer prior to the date of termination for which the City has budgeted and appropriated funds during any previous fiscal year.

Section 8.03. Remedies. Upon breach of any obligation or misrepresentation of facts under this Agreement, in addition to any other remedies expressly set forth in this Agreement with respect to such breach or misrepresentation, the aggrieved party shall have such remedies as are available in law or equity for breach of contract; provided, however, that no party shall be liable to any other party for lost profits, incidental or consequential damages. Notwithstanding the foregoing, the City, in entering into this Agreement does not waive its immunity from suit or any other limitations on its liability, contractual or otherwise, as granted by the Texas Constitution or applicable laws of the State of Texas. If any Grant Payments are made by the City before the City determines that Developer has breached the terms of this Agreement or misrepresented any facts relied upon by the City, Developer acknowledges and agrees that among the remedies available to the City is the right to recover any sums paid to Developer and Developer agrees that, in such event, it shall be liable to the City for reimbursement of any such sums.

Section 8.04. Offset. The City may deduct from any Grant Payments, as an offset, any delinquent and unpaid fees, sums of money or ad valorem, sales or other taxes assessed and owed to or for the benefit of the City.

Section 8.05. Force Majeure. As used in this Agreement, the term “*force majeure*” means an event beyond the reasonable control of a party obligated to perform an act or take some action under this Agreement including, but not limited to, acts of God, pandemic, earthquake, fire, explosion, war, civil insurrection, acts of the public enemy, act of civil or military authority, sabotage, terrorism, floods, lightning, hurricanes, tornadoes, severe snow storms or utility disruption, strikes, lockouts, major equipment failure or the failure of any major supplier to perform its obligations.

Section 8.06. Indemnification. Developer hereby agrees to indemnify and hold the City, and the City’s elected officials and employees, harmless from and against any indebtedness, loss, claim, demand, liability or lawsuit arising from any obligation of the Developer under this Agreement or breach of any representation, warranty, covenant or agreement of the Developer contained in this Agreement, without regard to any notice or cure provisions. The Developer’s indemnification obligation hereunder shall include payment of the City’s reasonable attorneys’ fees, costs and expenses with respect thereto.

ARTICLE IX MISCELLANEOUS

Section 9.01. Entire Agreement. This Agreement, including any exhibits hereto, contains the entire agreement between the parties with respect to the transactions contemplated herein.

Section 9.02. Further Actions. The City and the Developer will do all things reasonably necessary or appropriate to carry out the objectives, terms and provisions of this Agreement and to aid and assist each other in carrying out such objectives, terms and provisions, provided that the City shall not be required to spend any money or have further obligations other than to reimburse the Developer pursuant to the terms of this Agreement.

Section 9.03. Amendments. This Agreement may only be amended, altered, or terminated by written instrument signed by all parties.

Section 9.04. Assignment. Developer may not assign any of its rights, or delegate or subcontract any of its duties under this Agreement, in whole or in part, without the prior written consent of the City.

Section 9.05. Waiver. No term or condition of this Agreement shall be deemed to have been waived, nor shall there be any estoppel to enforce any provision of this Agreement, except by written instrument of the party charged with such waiver or estoppel.

Section 9.06. Notices. Any notice, statement and/or communication required and/or permitted to be delivered hereunder shall be in writing and shall be mailed by first-class mail, postage prepaid, or delivered by hand, messenger, reputable overnight carrier, or email, and shall be deemed delivered when received at the addresses of the parties set forth below, or at such other address furnished in writing to the other Party:

Developer: BRE Group 500 Wonder World 2022 LP.
708 Jewel Street
Austin, TX 78704
Telephone: (210) 250-1266
E-mail: eric@balconesre.com

City: City of San Marcos
630 E. Hopkins
San Marcos, Texas 78666
Attn: City Manager
Telephone: 512.393.8101
E-mail: *citymanagerinfo@sanmarcostx.gov*

Section 9.07. Applicable Law; Venue for Disputes; Attorney Fees. This Agreement is made, and shall be construed and interpreted under the laws of the State of Texas. Venue for any dispute or legal proceedings arising under this Agreement shall lie in state courts having jurisdiction located in Hays County, Texas. Venue for any matters in federal court will be in the

United States District Court for the Western District of Texas, Austin Division. The prevailing party in any litigation arising under this Agreement shall be entitled to reimbursement of costs of litigation, including reasonable attorney fees and costs.

Section 9.08. Severability. In the event any provision of this Agreement is illegal, invalid, or unenforceability under the applicable present or future laws, then, and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision that is found to be illegal, invalid, or unenforceable a provision be added to this Agreement which is legal, valid and enforceability and is a similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

Section 9.09. Third Parties. The City and the Developer intend that this Agreement shall not benefit or create any right or cause of action in or on behalf of any third-party beneficiary, or any individual or entity other than the City and the Developer or permitted assignees of the City and Developer, except that the indemnification and hold harmless obligations by the Developer provided for in this Agreement shall inure to the benefit of the indemnitees named therein.

Section 9.10. No Joint Venture. Nothing contained in this Agreement is intended by the parties to create a partnership or joint venture between the Parties, and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint either party as an agent of the other for any purpose whatsoever. Except as otherwise specifically provided herein, neither party shall in any way assume any of the liability of the other for acts of the other or obligations of the other.

Section 9.11. Prohibition on Contracts with Companies Boycotting Israel. Pursuant to Chapters 2270 and 808 of the Texas Government Code, Developer certifies that is not ineligible to receive the award of or payments under the Agreement and acknowledges that this Agreement

may be terminated and payment may be withheld if this certification is inaccurate. Failure to meet or maintain the requirements under this provision will be considered a material breach.

Section 9.12. Section 2252 Compliance. Section 2252 of the Texas Government Code restricts the City from contracting with companies that do business with Iran, Sudan, or a foreign terrorist organization. Developer hereby certifies that is not ineligible to receive the award of or payments under this Agreement. Failure to meet or maintain the requirements under this provision will be considered a material breach.

Section 9.13. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which constitute one instrument. PDF signed copies and digitally signed copies of this Agreement shall also be deemed to be originals for all purposes.

[SIGNATURE PAGE FOLLOWS]

EXECUTED in duplicate originals to be effective as of the Effective Date.

CITY:

By: _____
Stephanie Reyes, City Manager

DEVELOPER:

By: _____

EXHIBIT "A"
Site Plan and Elevations





