

**CHAPTER 380 GRANT AGREEMENT BY AND BETWEEN
THE CITY OF MCKINNEY, TEXAS, AND LANDON HOMES, LP**

This Chapter 380 Grant Agreement ("Agreement") is made by and between the City of McKinney, Texas ("City"), and Landon Homes, LP (the "Company"), acting by and through their respective authorized officers and representatives.

WHEREAS, the City Council of the City of McKinney, Texas ("City Council"), has investigated and determined that it is in the best interest of the City and its citizens to encourage programs, including programs for making loans and grants of public money to promote local economic development and stimulate business and commercial activity in the City pursuant to Chapter 380 of the Texas Local Government Code, as amended ("Chapter 380"); and

WHEREAS, the Company will be engaged in the business of purchasing building materials for its use on construction projects within the City; and

WHEREAS, the Company has advised that it would like to partner with the City, and that a contributing factor that would induce the Company to purchase items using a Texas Direct Payment Permit and generate economic development and local use tax revenue for the City, which would otherwise not be available to the City, would be an agreement by the City to provide an economic development grant to the Company; and

WHEREAS, the Company desires to purchase and use new building materials within the City that will generate additional economic development and use tax revenue for the City; and

WHEREAS, the City Council has investigated and determined that the Company meets the criteria for providing the grants (hereinafter defined), pursuant to Chapter 380, based on, among other things, the Company: (i) acquiring properties for development, and constructing improvements; (ii) adding taxable improvements to real property in the City; and (iii) creating employment opportunities for the citizens of McKinney (collectively the "Approved Project"); and

WHEREAS, the City has concluded that the Approved Project qualifies for a Grant under Chapter 380; and

WHEREAS, with the approval of this Agreement, the City hereby establishes a program authorized by Chapter 380 to encourage and induce the generation of local use tax; and

WHEREAS, the City has determined that making an economic development grant to the Company in accordance with this Agreement will further the objectives of the City, will benefit the City and the City's inhabitants, and will promote local economic development and stimulate business and commercial activity in the City;

NOW THEREFORE, in consideration of the foregoing, and on the terms and conditions hereinafter set forth, the sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE I RECITALS ADOPTED

1.01 All of the foregoing recitals are hereby found to be true and correct and they are hereby approved and incorporated into the body of this Agreement as if copied in their entirety.

ARTICLE II DEFINITIONS

2.01 For purposes of this Agreement, each of the following terms shall have the meaning set forth herein unless the context clearly indicates otherwise:

- (a) "City" shall mean The City of McKinney, Texas, including its corporate limits and all areas subject to the imposition of sales and use tax under a strategic partnership agreement executed pursuant to Section 43.0751(k) of the Texas Local Government Code.
- (b) "Company" shall mean Landon Homes, LP.
- (c) "Commencement Date" shall mean _____, 2014.
- (d) "Direct Payment Permit" also referred to herein as a "Texas Direct Payment Permit" shall mean that permit issued by the State of Texas authorizing Company to self-assess and pay applicable state and local use taxes directly to the State of Texas related to selected portions of Company's taxable purchases. Texas Rule 3.288 of the Texas Administrative Code defines the requirements and responsibilities of Texas Direct Payment Permit holders along with any amendments, permutations, or recodifications of such Code or Rules whether renaming such permits or otherwise modifying such provisions.
- (e) "Effective Date" shall mean _____, 2014.
- (f) "Event of Bankruptcy or Insolvency" shall mean the dissolution or termination (other than a dissolution or termination by reason of a party merging with an affiliate) of a party's existence as a going business, insolvency, appointment of receiver for any part of a party's property and such appointment is not terminated within ninety (90) business days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against a party and in the event such

proceeding is not voluntarily commenced by the party, such proceeding is not dismissed within ninety (90) business days after the filing thereof.

- (g) “Force Majeure” shall mean any delays due to strikes, riots, acts of God, shortages of labor or materials, war, terrorism, governmental approvals, laws, regulations, or restrictions, or any other cause of any kind whatsoever which is beyond the reasonable control of the party.
- (h) “Grant Period” shall mean the period beginning on the Commencement Date and ending on _____, 2024.
- (i) “Impositions” shall mean all use taxes that may be imposed by public or governmental authority on the Company or any taxable items purchased and used by Company within the City.
- (j) “Program” shall mean the economic incentive program established by the City pursuant to Chapter 380 of the Texas Local Government Code together with any amendments, permutations, or recodifications of such Code provisions whether renaming such economic incentive or other modifications thereof.
- (k) “Program Grant” shall mean the periodic payments paid by the City to the Company in accordance with Article IV of this Agreement.
- (l) “Taxable Items” shall have the same meaning assigned by Sections 151.010 and 151.0101 of the Tex. Tax Code, as amended.
- (m) “Use Tax Certificate” shall mean a certificate or other statement in a form reasonably acceptable to the City setting forth the Company’s collection of use tax imposed by and received by the City from the State of Texas, for the use of Taxable Items by Company in the City for the applicable calendar month during the Grant Period which are to be used to determine Company’s eligibility for a Grant, together with such supporting documentation required herein, and as City may reasonably request.
- (n) “Use Tax Receipts” shall mean the City’s receipts from the State of Texas from the collection of one percent (1%) general City use tax imposed by the City pursuant to Chapter 321 of the Texas Tax Code, attributed to the collection of use tax by Company directly attributable to the issuance of Company’s Texas Direct Payment Permit for Taxable Items used or consumed in the City.

ARTICLE III TERM

3.01 Term. The term of this Agreement shall begin on the Effective Date and continue for a ten (10) year period.

3.02 This Agreement shall remain in effect until City has made the Program Grants set forth in Article IV of the Agreement, or until otherwise terminated under the provisions of this Agreement.

3.03 This Agreement may be extended for an additional period of time on terms mutually acceptable to both parties by a written agreement executed by both parties.

ARTICLE IV ECONOMIC DEVELOPMENT GRANT

4.01 Grant. Subject to the Company's continuing compliance with: (a) all the terms and conditions of this Agreement, and (b) all of the City's codes, rules and regulations regarding the development of property within the City's corporate limits and extraterritorial jurisdiction, the City agrees to provide Company with an economic development grant from lawfully available funds payable as provided herein in an amount equal to 80% of the Use Tax Receipts, as previously defined herein-above (the "Grant"). The Grant will be paid each calendar month for a ten (10) Year period following the Commencement Date of the Agreement. The Grant will never include any monies the Company pays or owes to the State of Texas for any penalties for late payments, failures to report in a timely manner, and the like, related to the Use Tax Receipts. To the extent Company purchases taxable items from suppliers or vendors having a sales tax outlet situated within the City's corporate limits the Company shall pay sales and use taxes to such suppliers or vendors at the point of sale situated within the City's corporate limits without regard to the location from which such purchases are shipped to Company; and such purchases shall not be eligible for consideration in the calculation of the Grant.

4.02 Grant Payment. The City shall, within forty-five (45) calendar days after receipt of the actual Use Tax Receipts for the calendar month covered by a Use Tax Certificate submitted by Company pursuant to Article V, pay the Grant for the applicable calendar month to the Company, or as directed by the Company.

4.03 Amended Returns and Audits. In the event the Company files an amended use tax return, or report, or if additional use tax is due and owing, as a result of an audit conducted by the State of Texas that increases the Use Tax Receipts for a previous period covered within the term of this agreement, the Grant payment for the calendar month immediately following such State approved amendment shall be adjusted accordingly, provided the City must have received the Use Tax Receipts attributed to such adjustment. As a condition precedent to payment of such adjustment, Company

shall provide City with a copy of such amended use tax report, tax return or audit adjustment, and the approval thereof by the State of Texas.

4.04 Refunds. In the event the State of Texas determines that the City erroneously received Use Tax Receipts, or that the amount of use tax paid to the City exceeds the correct amount of use tax for a previous Grant paid to the Company, the Company shall, within thirty (30) days after receipt of notification thereof from the City specifying the amount by which such Grant exceeded the amount to which the Company was entitled pursuant to such State of Texas determination, pay such amount to the City. The City may at its option adjust the Grant payment for the calendar month immediately following such State of Texas determination to deduct there from the amount of the overpayment. As a condition precedent to payment of such refund, the City shall provide Company with a copy of such determination by the State of Texas.

ARTICLE V DOCUMENTATION SUPPORTING AND CONDITIONS PRECEDENT TO PAYMENT OF THE ECONOMIC DEVELOPMENT GRANT

The conditions contained in this Article V are conditions precedent to the City's obligation to make any Grant payment.

5.01 Use Tax Certificate. During the term of this Agreement, the Company shall within thirty (30) days after the end of each calendar month, provide the City with a Use Tax Certificate relating to such calendar month. The City shall have no duty to calculate the Use Tax Receipts or determine Company's entitlement to any Grant for a calendar month, or pay any Grant for a calendar month during the term of this Agreement until such time as Company has provided the City a Use Tax Certificate for such month along with a use tax report from the Texas State Comptroller for the applicable calendar month and the City has received the actual Use Tax Receipts from the State of Texas attributable to such calendar month. Company shall provide such additional documentation as may be reasonably requested by City to evidence, support and establish the use tax paid directly to the State of Texas pursuant to Company's Direct Payment Permit. The Use Tax Certificate for each calendar month shall at a minimum contain, include or be accompanied by the following:

- (a) A copy of all Texas Direct Payment Permit and self-assessment use tax returns and reports, use tax audit assessments, including amended use tax returns or reports, filed by the Company for such calendar month showing the total amount of the use tax paid directly to the State of Texas related to Company's operations for such calendar month; and
- (b) Information concerning any refund or credit received by the Company of any use tax paid by the Company which has previously been reported by the Company as use tax paid for a previous calendar month within the term of this agreement.

Company will provide to City the Use Tax Certificates from time to time pursuant to the terms of the Agreement, which Use Tax Certificates are confidential (“Confidential Information”) and, except as otherwise provided herein, may not be disclosed to a third party without the Company’s consent. To the extent that any disclosure of the Confidential Information may be required by law (such as in response to a public information request or subpoena), City will use reasonable efforts to inform Company of the request in sufficient time for Company to assert any objection it may have to such disclosure to an appropriate judicial or administrative body.

5.02 City must have received a Use Tax Certificate for the calendar month for which payment of a Grant is requested, and City must have received the actual Use Tax Receipts for such calendar month.

5.03 The Company shall provide the City with a true and correct copy of its Texas Direct Payment Permit, which permit shall be kept in full force and effect throughout the term of the Agreement.

5.04 The Company shall comply with the City’s ordinances, codes, rules, standards and regulations regarding the development of property within the City’s corporate limits including, but not limited to, zoning, subdivision, drainage, erosion control, pro rata payments, storm water, tree preservation, park land dedication, hike and bike trails, impact fees, Street Design Standards, Public Improvements Policy and construction standards together with the payment of any and all fees related to or arising out of the development (hereinafter referred to collectively as “Development Regulations”) of any property that is a part of the Approved Project.

- (a) Upon City’s determination that Company is not in compliance with any of City’s Development Regulations, City shall provide Company written notice (“City Notice”) of the Development Regulations with which Company has failed to comply, the situation giving rise to such non-compliance and the steps required by City for Company to attain compliance.
- (b) Company shall have 60 days from the date of the City Notice to complete the steps required by City in order to attain compliance (“Grace Period”). If Company fails or refuses to complete the steps required by City in order to attain compliance as set out in the City Notice prior to the conclusion of said Grace Period, Company shall be deemed to be in non-compliance with the terms and conditions of this Agreement until Company fully complies with the steps required by City in order to attain compliance as set out in the City Notice (“Non-Compliance Period”).
- (c) Company’s request(s) for Grant payments received by City during said Grace Period shall be processed as if Company was in full compliance with the City’s Development Regulations.

- (d) If Company completes the steps required by City in order to attain compliance as set out in the City Notice prior to the end of said Grace Period the Company's request(s) for Grant payments will continue to be honored and processed without delay as provided in this Agreement.
- (e) City shall suspend the processing and payment of all of Company's requests for Grant payments that are received during any Non-Compliance Period. Notwithstanding, City's suspension of the processing and payment of Company's requests for Grant payments, Company shall continue to submit requests for Grant payments to City in accordance with the requirements of this Agreement during any Non-Compliance Period. Failure to submit a request for Grant payment may result in the denial of such request.
- (f) The Non-Compliance Period will be terminated when Company completes the steps required by City in order to attain compliance as set out in City's Notice. Upon the termination of a Non-Compliance Period, City shall:
 - (1) Begin processing Company's requests for Grant payment(s) that were received during that Non-Compliance Period in accordance with the provisions of this Agreement save and except that the time for payment as to such requests for Grant payment(s) shall be extended by an amount of time equal to the Non-Compliance Period; and
 - (2) Process Company's requests for Grant payment(s) received after that Non-Compliance Period in accordance with the provisions of this Agreement.
- (g) It is possible for Company to be in multiple, or overlapping, Non-Compliance Periods at the same time. If, a Non-Compliance Period is terminated as provided herein-above and Company is also in one or more Non-Compliance Periods related to a City Notice that was delivered to Company before the City Notice related to the terminated Non-Compliance Period, the City will not process Company's requests for Grant payment(s) that were received during or following the terminated Non-Compliance Period until such time as the earlier Non-Compliance Period(s) have been terminated. If a Non-Compliance Period is terminated as provided herein-above and Company is also in a Non-Compliance Period related to a City Notice that was delivered to Company after the City Notice related to a terminated Non-Compliance Period, the City will process Company's requests for Grant payment(s) that were received during the time period between the commencement of the terminated earlier Non-Compliance Period and the commencement of the subsequent Non-Compliance Period.

5.05 Neither the Company nor the City shall have an uncured material breach or default of this Agreement.

5.06 To the extent Company purchases taxable items from suppliers or vendors having a sales tax outlet situated within the City's corporate limits the Company shall pay sales and use taxes to such suppliers or vendors at the point of sale situated within the City's corporate limits without regard to the location from which such purchases are shipped to Company; and such purchases shall not be eligible for consideration in the calculation of any Grant Payment.

ARTICLE VI TERMINATION

- 6.01 This Agreement may be terminated upon any one of the following:
- (a) by mutual written agreement of the parties;
 - (b) by City or Company, respectively, if the other party defaults or breaches any of the terms or conditions of this Agreement in any material respect and such default or breach is not cured within thirty (30) days after written notice thereof by the City or Company, as the case may be;
 - (c) by City, if any Impositions owed to the City or the State of Texas by Company shall have become delinquent (provided, however, Company retains the right to timely and properly protest and contest any such Impositions);
 - (d) by City, if Company suffers an Event of Bankruptcy or Insolvency;
 - (e) by City or Company, respectively, if any subsequent Federal or State legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable;
 - (f) by Company, if City fails to pay an applicable Grant Payment within 45 days after the receipt of a valid Tax Certificate provided by Company and satisfaction of the last of the conditions precedent to said payment as set forth in Article V, herein-above, if City does not cure such breach within 30 days after notice by Company; or
 - (g) expiration of the term hereof, or any subsequent renewal of said term.

The rights, responsibilities and liabilities of the parties under this Agreement shall be extinguished upon the termination of this Agreement except for any rights, responsibilities and/or liabilities that accrued prior to such termination.

ARTICLE VII MISCELLANEOUS

7.01 Binding Agreement. The terms and conditions of this Agreement are binding upon the parties to this agreement and their respective successors and

permitted assigns. This Agreement may not be assigned without the express written consent of City, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing and subject to the prior written consent of the City Manager, the Company may assign this Agreement to an affiliate or to a successor company. Upon any such assignment, (a) Company's affiliate or successor steps into the shoes of Company and accepts and assumes any and all obligations and liabilities of Company under this Agreement and any notices given to Company shall be deemed to have been given to said affiliate or successor, and (b) Company automatically yields any and all rights or claims to which it may have otherwise been entitled under the Agreement including, but not limited to, any outstanding unpaid requests for Grant payments.

7.02 Limitation on Liability. It is understood and agreed between the parties that the Company and City, in satisfying the conditions of this Agreement, have acted independently, and City assumes no responsibilities or liabilities to third parties in connection with these actions. The Company agrees to indemnify and hold harmless the City from all such claims, suits, and causes of actions, liabilities and expenses, including reasonable attorney's fees, of any nature whatsoever by a third party arising out of the Company's performance of the conditions under this Agreement.

7.03 No Joint Venture. It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture between the parties.

7.04 Authorization. Each party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

7.05 Notice. Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below (or such other address as such party may subsequently designate in writing) or on the day actually received if sent by courier or otherwise hand delivered sent via fax.

If intended for City, to:

City of McKinney
Attn: Tom Muehlenbeck, Interim City Manager
P.O. Box 517
222 N. Tennessee Street
McKinney, Texas 75069

With a copy to:

Mark S. Houser
Brown & Hofmeister, LLP
740 East Campbell Road, Suite 800
Richardson, Texas 75081

If intended for the Company:

Daniel J. Walsh
Chief Financial Officer
Landon Homes, LP
4050 West Park Blvd Plano, Texas 75093

With a copy to:

Ken Sloan
Sloan and Roberts
5950 Berkshire Ln, Suite 450
Dallas, Texas 75225-5835

7.06 Entire Agreement. This Agreement is the entire Agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the parties that in any manner relates to the subject matter of this Agreement.

7.07 Governing Law. The laws of the State of Texas shall govern the Agreement; and this Agreement is fully performable in McKinney, Collin County, Texas with exclusive venue for any action concerning this Agreement being in a court of competent jurisdiction in Collin County, Texas.

7.08 Amendment. This Agreement may only be amended by the mutual written agreement of the parties.

7.09 Legal Construction. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

7.10 Recitals. The recitals to this Agreement are incorporated herein.

7.11 Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall

constitute one and the same instrument and any such counterparts shall be deemed to be incorporated herein.

7.12 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

7.13 Sovereign Immunity. The parties agree that the City has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.

7.14 Dispute Resolution. Any controversy or claim arising from or relating to this Agreement, or a breach thereof shall be subject to nonbinding mediation, as a condition precedent to the institution of legal or equitable proceedings by any party unless the institution of such legal or equitable proceeding is necessary to avoid the running of an applicable statute of limitation. The parties shall endeavor to resolve their claims by mediation. City and Company shall share the costs of mediation equally. The mediation shall be held in McKinney, Texas, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

EXECUTED as of the ____ day of _____, 2014.

THE CITY OF MCKINNEY, TEXAS

By: _____
TOM MUEHLENBECK
Interim City Manager

ATTEST:

SANDY HART, TRMC, MMC
City Secretary
DENISE VICE
Assistant City Secretary

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney

LANDON HOMES, LP, a Texas limited partnership

By: Landon Development Company, LLC,
a Texas limited liability company,
its sole general partner

By: _____
DANIEL J. WALSH
Chief Financial Officer

THE STATE OF TEXAS

COUNTY OF COLLIN

BEFORE ME, the undersigned authority, in and for said County, Texas, on this day personally appeared, TOM MUEHLENBECK, Interim City Manager of the CITY OF MCKINNEY, a Texas Municipal Corporation, known to me to be the person who's name is subscribed to the foregoing instrument, and acknowledged to me that he has executed the same on the City's behalf.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE ____ DAY OF _____, 20____.

Notary Public _____ County, Texas
My commission expires _____

THE STATE OF TEXAS

COUNTY OF COLLIN

This instrument was acknowledged before me on the _____ day of _____, 2014 by DANIEL J. WALSH, Chief Financial Officer of Landon Development Company, LLC, a Texas limited liability company, sole General Partner of Landon Homes LP, a limited partnership company, on behalf of said limited liability company and limited partnership.

Notary Public _____ County, Texas
My commission expires _____