

**CHAPTER 380 GRANT AGREEMENT BY
AND BETWEEN THE CITY OF MANSFIELD, TEXAS
AND HIGHLAND HOMES - DALLAS, LLC**

This **CHAPTER 380 GRANT AGREEMENT** ("Agreement") is made by and between The City of Mansfield, Texas ("City", also referred to as "Grantor") and Highland Homes - Dallas, LLC (the "Company"), acting by and through their respective authorized officers and representatives.

WHEREAS, the City Council of the City of Mansfield, 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, 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, that would otherwise not be available to the City, would be an agreement by the Grantor 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 Mansfield ("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 of the Texas Local Government Code to encourage and induce the generation of local use tax; and

WHEREAS, the Grantor has determined that making an economic development grant to the Company in accordance with this Agreement will further the objectives of the Grantor, 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 DEFINITIONS

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

"City" and "Grantor" shall mean The City of Mansfield, Texas.

"Company" shall mean Highland Homes - Dallas, LLC

"Commencement Date" shall mean May 1, 2021.

"Effective Date" shall mean May 1, 2021.

"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.

"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.

"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.

"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.

"Program Grant" shall mean the periodic payments paid by the City to the Company in accordance with Section 3 of this Agreement.

“Grant Period” shall mean consecutive six (6) month periods during the term of this Agreement, except that the first Grant Period shall begin on the Effective Date and continue through and include the last day of June 2021 following the Effective Date. For illustration purposes, assume the Effective Date is May 1, 2021 then the first Grant Period would begin on May 1, 2021 and continue through and include June 30, 2021. The next Grant Period would begin on July 1, 2021 and continue through and include December 31, 2021. The final Grant Period for the initial 10-year term of the Agreement would be from January 1, 2031 and end on April 30, 2031.

"Taxable Items" shall have the same meaning assigned by Sections 151.010 and 151.0101, TEX. TAX CODE, as amended.

"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.

"Use Tax Receipts" shall mean the Grantor's net 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 associated with the issuance of Company's Texas Direct Payment for Taxable Items used or consumed in the City.

"Use Tax Certificate" shall mean a certificate or other statement in a form reasonably acceptable to the Grantor setting forth the Company's collection of use tax imposed by and received by the Grantor from the State of Texas, for the use of Taxable Items by Company in the City for the applicable calendar month during a Grant Period which are to be used to determine Company's eligibility for a Grant, together with such supporting documentation required herein, and as Grantor may reasonably request.

ARTICLE II TERM

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

2.02 This Agreement shall remain in effect until Grantor has made the Program Grants set forth in Section 3 of the Agreement, or until otherwise terminated under the provisions of this Agreement.

2.03 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 III ECONOMIC DEVELOPMENT GRANT

3.01 Grant. Subject to the Company's continued compliance of all the terms and conditions of this Agreement, the Grantor agrees to provide Company with an economic development grant from lawful available funds payable as provided herein in an amount equal to 80% of the Use Tax Receipts, as previously defined herein (the "Grant"). The Grant will be paid semi-annually at the end of June and the end of December with the potential exception of the final Grant Period during the ten (10) year period following the execution of the Agreement, commencing May 1, 2021. 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.

3.02 Grant Payment. Grantor shall pay the Grant for the applicable Grant Period within forty-five (45) days after receipt of a Use Tax Certificate from Company following the end of each Grant Period, pursuant to Section 4.01. Company shall submit Use Tax Certificates to Grantor within thirty (30) days following the end of the applicable Grant Period, beginning with the first Grant Period. For illustration purposes, assume the first Grant Period begins on May 1, 2021 and continues through and includes June 30, 2021. Company would submit a Use Tax Certificate to Grantor for the first Grant Period by July 30, 2021 and Grantor would pay the first Grant within forty-five (45) days after receipt of the Use Tax Certificate and after receiving all of the net Use Tax Receipts within the Grant Period. Further assume that the Use Tax Receipts for the first Grant Period equal Five Thousand Dollars (\$5,000.00), then the amount of the first Grant would be Four Thousand Dollars (\$4,000.00).

3.03 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 Grant Period immediately following such State approved amendment shall be adjusted accordingly, provided the Grantor must have received the Use Tax Receipts attributed to such adjustment. As a condition precedent to payment of such adjustment, Company shall provide Grantor with a copy of such amended use tax report, tax return or audit adjustment, and the approval thereof by the State of Texas.

3.04 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 Grantor. The Grantor may at its option adjust the Grant payment for the Grant Period 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 IV
DOCUMENTATION SUPPORTING THE ECONOMIC DEVELOPMENT GRANT

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

4.01 Use Tax Certificate. During the term of this Agreement, the Company shall within thirty (30) days after the end of each Grant Period, provide the Grantor with a Use Tax Certificate relating to Use Tax Receipts paid during the Grant Period. The Grantor shall have no duty to calculate the Use Tax Receipts or determine Company's entitlement to any Grant for a Grant Period, or pay any Grant during the term of this Agreement until such time as Company has provided the Grantor a Use Tax Certificate for such Grant Period and the Grantor has received the actual Use Tax Receipts from the State of Texas attributable to such calendar months within the Grant Period. Company shall provide such additional documentation as may be reasonably requested by Grantor 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 Grant Period 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 during the applicable Grant Period, use tax audit assessments or credits, including amended use tax returns or reports, filed by the Company during the Grant Period showing use tax paid directly to the State of Texas related to Company's operations for the Grant Period; and
- b. Information concerning any refund or credit received by the Company of use tax paid by the Company which has previously been reported by the Company as use tax paid for a previous Grant Period within the term of this agreement.

Company will provide to Grantor the Use Tax Certificates from time to time pursuant to the terms of the Agreement, which 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, Grantor 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.

4.02 Grantor must have received a Use Tax Certificate for the months within the Grant Period for which payment of a Grant is requested, and Grantor must have received the actual Use Tax Receipts for all calendar months within the Grant Period.

4.03 The Company intends to issue its Texas Direct Payment Permit to specific suppliers or vendors that provide large quantities of building materials or other tangible personal property.

4.04 The Company shall provide the Grantor 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.

4.05 Company or the City shall not have an uncured material breach or default of this Agreement.

ARTICLE V TERMINATION

5.01 This Agreement may be terminated upon any one of the following:

- (a) by mutual written agreement of the parties;
- (b) by Grantor 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 Grantor or Company, as the case may be;
- (c) by Grantor, if any Impositions owed to the Grantor 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 Grantor, if Company suffers an Event of Bankruptcy or Insolvency;
- (e) by Grantor 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; or
- (f) by Company, if the City does not pay the applicable Grant amount within 45 days of receipt of the Use Tax Receipts as required herein covered by a valid Use Tax Certificate issued by Company or fails to cure this breach within an additional 30 days and so long as the Company is not in default, or;
- (g) expiration of the term, or any subsequent renewal of the 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 VI MISCELLANEOUS

6.01 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 Grantor, which consent shall not be unreasonably withheld or delayed.

6.02 Limitation on Liability. It is understood and agreed between the parties that the Company and Grantor, in satisfying the conditions of this Agreement, have acted independently, and Grantor assumes no responsibilities or liabilities to third parties in connection with these actions. The Company agrees to indemnify and hold harmless the Grantor 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.

6.03 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.

6.04 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.

6.05 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:

Attn: Joe Smolinski
Mansfield City Manager
1200 E. Broad St.
Mansfield, TX 76063

With a copy to:

Attn: Betsy Elum
Taylor, Olson, Adkins, Sralla & Elum, LLP
6000 Western Place, Suite 200
Fort Worth, TX 76107

If intended for the Company:

Attn: Dan Miller
Chief Financial Officer
Highland Homes - Dallas, LLC
5601 Democracy, Suite 300
Plano, TX 75024

With a copy to:

Attn: Brad Gahm
General Counsel
Highland Homes - Dallas, LLC
5601 Democracy, Suite 300
Plano, TX 75024

6.06 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.

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

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

6.09 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.

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

6.11 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.

6.12 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.

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

6.14 Dispute Resolution. Any controversy or claim arising from or relating to this Agreement, or a breach thereof shall be subject to non-binding 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. Grantor and Company shall share the costs of mediation equally. The mediation shall be held in Mansfield, Texas, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

/SIGNATURE PAGES FOLLOW/

EXECUTED as of the ____ day of _____, 2021.

THE CITY OF MANSFIELD, TEXAS

By: _____
Joe Smolinski, Mansfield City Manager

ATTEST:

City Secretary

By: _____

EXECUTED as of the ____ day of _____, 2021.

Highland Homes - Dallas, LLC
a Texas limited liability corporation

By: Highland Operating Dallas, LLC
a Texas corporation

By: _____
Name: Dan Miller
Title: Chief Financial Officer

ACKNOWLEDGMENTS

STATE OF TEXAS

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CITY OF MANSFIELD

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This instrument was acknowledged before me on the _____ day of _____, 2021
by Joe Smolinski, City Manager of The City of Mansfield, Texas, on behalf of said city.

Name: _____

Notary Public, State of Texas

My commission expires: _____

STATE OF TEXAS

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CITY OF PLANO

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This instrument was acknowledged before me on the _____ day of _____,
2021 by Dan Miller, Chief Financial Officer of Highland Operating Dallas, LLC, a Texas limited
liability corporation, Owner of Highland Homes – Dallas, LLC, a limited liability corporation, on
behalf of said limited liability corporation.

Name: _____

Notary Public - State of Texas

My commission expires: _____