

STATE OF TEXAS §
 § ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT
COUNTY OF DALLAS §

This Economic Development Incentive Agreement (“Agreement”) is made by and between the City of Coppel, Texas (the “City”), and Archway 121 Coppel, Ltd., a Texas limited partnership (“Company”) (each a “Party” and collectively the “Parties”), acting by and through their respective authorized officers.

W I T N E S S E T H:

WHEREAS, Company owns the real property located at the northeast corner of Freeport Parkway and State Highway 121, in Coppel, Texas, further described in **Exhibit “A”** (the “Property”); and

WHEREAS, Company intends or has entered a contract for the purchase and sale of the Property with Varidesk, LLC (“Vari”) (the “Purchase and Sale Agreement”); and

WHEREAS, Vari intends to purchase the Property for use as its corporate headquarters; and

WHEREAS, Company has agreed to relocate certain utilities in connection with the sale of the Property to Vari (the “Project”); and

WHEREAS, Company has advised City that a contributing factor that would induce the Company to undertake the Project would be an agreement by City to provide an economic development grant to Company to defray a portion of the costs of such relocation; and

WHEREAS, promoting the expansion and maintenance of existing business enterprises within the City will promote economic development, stimulate commercial activity, generate additional sales tax and will enhance the property tax base and economic vitality of the City; and

WHEREAS, the City has adopted programs for promoting economic development and this Agreement and the economic development incentives set forth herein are given and provided by the City pursuant to and in accordance with those programs; and

WHEREAS, the City is authorized by Article III, Section 52-a of the Texas Constitution and Texas Local Government Code Chapter 380 to provide economic development grants to promote local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, the City has determined that making an economic development grant to the Company in accordance with this Agreement is in accordance with the City Economic Development Program and will: (i) further the objectives of the City; (2) benefit the City and the

City's inhabitants; and (iii) 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, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

Article I Term

This Agreement shall be effective on the Effective Date and shall continue until the Expiration Date, unless sooner terminated as provided herein.

Article II Definitions

Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

“Bankruptcy or Insolvency” shall mean the dissolution or termination of a Party’s existence as a going business, insolvency, appointment of receiver for any part of such Party’s property and such appointment is not terminated within ninety (90) 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 such Party and such proceeding is not dismissed within ninety (90) days after the filing thereof.

“City” shall mean City of Coppell, Texas.

“Commencement of Construction” shall mean that: (i) the plans have been prepared and all approvals thereof and permits with respect thereto required by applicable governmental authorities have been obtained for construction of the Project; (ii) all necessary permits for the construction of the Project to the respective plans therefore having been issued by all applicable governmental authorities; and (iii) grading of the Property has commenced.

“Company” shall mean Archway 121 Coppell, Ltd., a Texas limited partnership.

“Completion of Construction” shall mean: (i) substantial completion of the Project; and (ii) the date City has conducted a final inspection of the Project.

“Effective Date” shall mean the last date of execution hereof.

“Expiration Date” shall mean the date the Parties have fully satisfied their respective obligations herein.

“Force Majeure” shall mean any contingency or cause beyond the reasonable control of a Party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of the Party), fires, explosions or floods, strikes, slowdowns, pandemics or work stoppages.

“Grant” shall mean an economic development grant to offset the actual costs incurred and paid by Company for the Project not to exceed Three Hundred Thousand Dollars (\$300,000.00), to be paid as set forth herein.

“Impositions” shall mean all taxes, assessments, use and occupancy taxes, charges, excises, license and permit fees, and other charges by public or governmental authority, general and special, ordinary and extraordinary, foreseen and unforeseen, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on Company or any property or any business owned by Company within City.

“Payment Request” shall mean a written request from Company to City for payment of the Grant, which request shall be accompanied by copies of invoices, bills and receipts to document the actual costs incurred and paid by Company for the Project, and such other information, as may reasonably be requested by City evidencing the costs incurred and paid by the Company for the Project.

“Project” shall have the meaning assigned in the Recitals.

“Property” means the real property described in **Exhibit “A”**.

“Purchase and Sale Agreement” shall have the meaning assigned in the Recitals.

“Related Agreement” shall mean any agreement (other than this Agreement) by and between City and Company and/or any of its affiliated or related entities.

Article III

Economic Development Grant

3.4 **Grant.** Subject to the continued satisfaction of all the terms and conditions of this Agreement by Company, and the obligation of Company to repay the Grant pursuant to Article V hereof, City agrees to provide Company with the Grant to be paid to Company within thirty (30) days after receipt of a Payment Request following the date of Completion of Construction of the Project. Failure of Company to submit the Payment Request within sixty (60) days after the date of Completion of Construction of the Project shall operate as a forfeiture of the Grant.

3.5 **Current Revenue.** Under no circumstances shall the obligations of City hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. The Annual Improvement Grants shall be paid solely from annual appropriations from the general

funds of City or from such other funds of City as may be legally set aside for such purpose consistent with Article III, Section 52(a) of the Texas Constitution.

3.6 Grant Limitations. City shall not be obligated to pay any commercial bank, lender or similar institution for any loan or credit agreement made by Company. None of the obligations of City under this Agreement shall be pledged or otherwise encumbered by Company in favor of any commercial lender and/or similar financial institution.

Article IV Conditions to Grants

The obligation of City to provide the Annual Improvement Grants shall be conditioned upon the compliance and satisfaction by Company of the terms and conditions of this Agreement and each of the conditions set forth in Article IV.

4.1 Payment Request. Company shall, as a condition precedent to the payment of the Grant, timely provide City with the applicable Payment Request.

4.2 Good Standing. Company shall not have an uncured breach or default of this Agreement, or a Related Agreement.

4.3 Completion of Project. Company shall have caused the Completion of Construction of the relocation of the Utilities.

4.4 Closing of Sale. Company and Vari shall have closed the sale and purchase of the Property.

Article V Termination

5.1 Termination. This Agreement shall terminate upon any one or more of the following:

- (a) by written agreement of the Parties;
- (b) Expiration Date;
- (c) upon written notice, by either Party in the event the other Party breaches any of the terms or conditions of this Agreement, or a Related Agreement, and such breach is not cured within sixty (60) days after the nonbreaching Party sends written notice to the breaching Party of such breach;
- (d) upon written notice, by City, if Company suffers an event of Bankruptcy or Insolvency;
- (e) upon written notice, by City, if any Impositions owed to City or the State of Texas by Company shall become delinquent (provided, however, Company retains the right to timely and properly protest and contest any such Impositions) and if Company does not resolve such delinquency within thirty (30) days of such written notice; or

- (f) upon written notice, by either Party, 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.

5.2 Repayment. In the event the Agreement is terminated by City pursuant to Section 5.1 (c), (d), (e) or (f), Company shall immediately refund to City an amount equal to the Grant paid by City to Company preceding the date of such termination, plus interest at the rate of interest periodically announced by the *Wall Street Journal* as the prime or base commercial lending rate, or if the *Wall Street Journal* shall ever cease to exist or cease to announce a prime or base lending rate, then at the annual rate of interest from time to time announced by Citibank, N.A. (or by any other New York money center bank selected by City) as its prime or base commercial lending rate, from the date on which each Annual Improvement Grant is paid by City until each such Annual Improvement Grant is refunded by Company. The repayment obligation of Company set forth in this section shall survive termination.

5.3 Right of Offset. City may, at its option, offset any amounts due and payable under this Agreement against any debt (including taxes) lawfully due to City from Company, regardless of whether the amount due arises pursuant to the terms of this Agreement, a Related Agreement or otherwise and regardless of whether or not the debt due City has been reduced to judgment by a court.

Article VI Miscellaneous

6.1 Binding Agreement. The terms and conditions of this Agreement are binding upon the successors and permitted assigns of the Parties hereto. This Agreement may not be assigned without the express written consent of the City Manager.

6.2 Limitation on Liability. It is understood and agreed between the Parties that the Company, in satisfying the conditions of this Agreement, has acted independently, and the 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 of any nature whatsoever by a third party arising out of the Company's failure to perform its obligations under this Agreement.

6.3 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 among the Parties.

6.4 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.

6.5 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 on the day received if sent by courier or otherwise hand delivered.

If intended for City, to:

Attn: City Manager
City of Coppel, Texas
P. O. Box 478
Coppel, Texas 75019

With a copy to:

Peter G. Smith
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Ross Tower
500 N. Akard
Dallas, Texas 75201

If intended for Company:

Attn: Eric Hawk
Archway 121 Coppel, Ltd.
8390 LBJ Freeway, Suite 565
Dallas, Texas 75243
ewhawk@archwayprop.com –

With a copy to:

Attn: John R. Jones
John R. Jones, P.C.
123 N. Post Oak Lane, Suite 400
Houston, Texas 77024
jrj@johnrjonespc.com

6.6 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, except as provided in any Exhibits attached hereto.

6.7 Governing Law. The Agreement shall be governed by the laws of the State of Texas without regard to any conflict of law rules. Exclusive venue for any action concerning this Agreement shall be in the State District Court of Dallas County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

6.8 Amendment. This Agreement may only be amended by the mutual written agreement of the Parties.

6.9 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.

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 Employment of Undocumented Workers. During the term of this Agreement the Company agrees not to knowingly employ any undocumented workers and, if convicted of a violation under 8 U.S.C. Section 1324a (f), the Company shall repay the amount of the Grant and any other funds received by the Company from City as of the date of such violation within one hundred twenty (120) days after the date the Company is notified by City of such violation, plus interest at the rate of four percent (4%) compounded annually from the date of violation until paid. The Company is not liable for a violation of this section in relation to any workers employed by a subsidiary, affiliate, or franchisee of the Company or by a person with whom the Company contracts.

6.14 Conditions Precedent. This Agreement is expressly subject to and the obligations of the Parties are contingent upon: (i) Company and Vari having entered the Purchase and Sale Agreement; and (ii) Company and Vari having closed the purchase of the Property pursuant to the Purchase and Sale Agreement.

[Signature page to follow]

EXECUTED on this _____ day of _____, 2020.

CITY OF COPPELL, TEXAS

By: _____
Karen Selbo Hunt, Mayor

ATTEST:

By: _____
Ashley Owens, City Secretary

APPROVED AS TO FORM:

By: _____
City Attorney

EXECUTED this the _____ day of _____, 2020.

ARCHWAY 121 COPPELL, LTD.

**DONALD E. DENNIS, JR. INC.,
ITS GENERAL PARTNER**

By: _____
Eric W. Hawk
Title: Vice-President

EXHIBIT “A”
Legal Description of Property

BEING a 9.84 acre (428,553 square foot) tract of land situated in the Thomas W. Cousey Survey, Abstract Number 317, City of Coppell, Dallas County, Texas, and being part of Lot 1, Block 1 of Lots 1 & 2, Phase 1, Block 1, One Twenty One Business Park, an addition to the City of Coppell, Dallas County, Texas, as recorded in Volume 99157, Page 27 of the Deed Records of Dallas County, Texas (D.R.D.C.T.) and being all of a tract of land described in Special Warranty Deed to Sealy Canyon Drive Land, L.L.C, as recorded in Instrument Number 201600333502 of the Official Public Records of Dallas County, Texas (O.P.R.D.C.T.), and being all of Lot 6R, Block A of Prologis Park One Twenty One, Lots 5R and 6R, Block A, an addition to the City of Coppell, Dallas County, Texas, as recorded in Instrument Number 201600331182, O.P.R.D.C.T. and being all of called 5.93 acre tract of land described in deed to Prologis Logistics Services Incorporated, as recorded in Instrument Number 201500253657, O.P.R.D.C.T., and being more particularly described as follows:

BEGINNING at the northeast corner of a called 1.678 acre tract of land described as “Parcel 16” in deed to State of Texas, as recorded in Instrument Number 201200222193, O.P.R.D.C.T., said corner being the intersection of the east right-of-way line of State Highway 121, the south right-of-way line of said Canyon Drive (a 60-foot wide right-of-way), the north line of said Lot 1, and the point of curvature of a non-tangent circular curve to the left, having a radius of 460.27 feet, whose chord bears South 79 degrees 47 minutes 15 seconds East, a distance of 166.34 feet, from which a found monument bears South 73 degrees 03 minutes 47 seconds West, a distance of 1.0 feet;

THENCE Southeasterly, with the north of said Lot 1, the south right-of-way line of said Canyon Drive and with said curve, through a central angle of 20 degrees 49 minutes 17 seconds, an arc distance of 167.26 feet to a corner, from which a 5/8-inch found iron rod with cap stamped “M. FELOBUSCH” bears South 55 degrees 55 minutes 26 seconds West, a distance of 0.4 feet;

THENCE North 89 degrees 43 minutes 31 seconds East, with the north line of said Lot 1 and the south right-of-way line of said Canyon Drive, a distance of 8.24 feet to a set crow’s foot for the intersection of said south right-of-way and the west right-of-way line of Northwest Drive (a 33-foot wide right-of-way), said corner being the point of curvature of a tangent circular curve to the right, having a radius of 25.00 feet, whose chord bears South 22 degrees 48 minutes 47 seconds East, a distance of 19.17 feet;

THENCE with the west right-of-way line of said Northwest Drive, the following bearings and distances:

Southerly, with the east line of said Lot 1 and with said curve, through a central angle of 45 degrees 04 minutes 36 seconds, an arc distance of 19.67 feet to a found “X” cut in concrete for corner;

South 00 degrees 16 minutes 29 seconds East, with the east line of said Lot 1, a distance of 382.20 feet to a set “X” cut in concrete for the southeast corner of said Lot 1;

South 89 degrees 43 minutes 54 seconds West, with the south line of said Lot 1, a distance of 2.75 feet to a 1/2-inch found iron rod with yellow plastic cap stamped “HALFF” (hereinafter referred to as “with cap”) for the northeast corner of said Lot 6R;

THENCE with the common east line of said Lot 6R and the west right-of-way line of said Northwest Drive (a 38-foot wide right-of-way), the following bearings and distances:

South 00 degrees 11 minutes 52 seconds East, a distance of 1.08 feet to a 1/2-inch found iron rod with cap for the point of curvature of a tangent circular curve to the right, having a radius of 181.00 feet, whose chord bears South 32 degrees 38 minutes 48 seconds West, a distance of 195.43 feet;

Southwesterly, with said curve, through a central angle of 65 degrees 20 minutes 56 seconds, an arc distance of 206.44 feet to a 1/2-inch found iron rod with cap for the point of reverse curvature of a tangent circular curve to the left, having a radius of 219.00 feet, whose chord bears South 53 degrees 43 minutes 48 seconds West, a distance of 88.01 feet;

Southwesterly, with said curve, through a central angle of 23 degrees 10 minutes 56 seconds, an arc distance of 88.61 feet to a 1/2-inch found iron rod with cap for corner;

South 42 degrees 08 minutes 20 seconds West, a distance of 412.07 feet to a 1/2-inch found iron rod with cap for corner;

South 87 degrees 08 minutes 20 seconds West, a distance of 26.85 feet to a 1/2-inch found iron rod with cap for the point of curvature of a non-tangent circular curve to the left, having a radius of 310.50 feet, whose chord bears North 53 degrees 13 minutes 15 seconds West, a distance of 33.22 feet, said corner being the intersection of the northwest right-of-way line of said Northwest Drive and the northeast right-of-way line of Freeport Parkway (a variable width right-of-way);

THENCE with the northeast right-of-way line of said Freeport Parkway and the southwest line of said Lot 6R, the following bearings and distances:

Northwesterly, with said curve, through a central angle of 06 degrees 07 minutes 58 seconds, an arc distance of 33.24 feet to a 1/2-inch found iron rod with cap for corner;

North 56 degrees 17 minutes 14 seconds West, a distance of 89.18 feet to a 1/2-inch found iron rod with cap for the point of curvature of a tangent circular curve to the right, whose chord bears North 52 degrees 11 minutes 09 seconds West, a distance of 160.85 feet;

Northwesterly, with said curve, through a central angle of 08 degrees 12 minutes 09 seconds, an arc distance of 160.99 feet to a 1/2-inch found iron rod with cap for corner at the intersection of the northeast right-of-way line of said Freeport Parkway with the southeast right-of-way line of said State Highway 121;

THENCE with the southeast right-of-way line of said State Highway 121, the following bearings and distances:

North 43 degrees 04 minutes 04 seconds West, with the southwest line of said Lot 6R, a distance of 9.35 feet to a found monument for corner;

North 47 degrees 59 minutes 54 seconds West, with the southwest line of said Lot 6R, a distance of 75.82 feet to a found monument for corner;

North 22 degrees 13 minutes 47 seconds West, with the southwest line of said Lot 6R, a distance of 85.52 feet to a found monument for corner;

North 37 degrees 38 minutes 29 seconds East, with the northwest line of said Lot 6R, a distance of 145.94 feet to a found monument for corner;

North 41 degrees 19 minutes 26 seconds East, with the northwest line of said Lot 6R, a distance of 135.07 feet to a found monument for the northwest corner of said Lot 6R, said corner being on the south line of said Lot 1;

South 89 degrees 43 minutes 54 seconds West, with the south line of said Lot 1, a distance of 0.47 feet to a found monument for the southwest corner of said Lot 1 and the southeast corner of said 1.678 acre tract;

THENCE with the southeast right-of-way line of said State Highway 121 and the northwest line of said Lot 1, the following bearings and distances:

North 41 degrees 19 minutes 26 seconds East, a distance of 267.77 feet to a found monument for corner;

North 37 degrees 08 minutes 49 seconds East, a distance of 256.90 feet to a found monument for corner;

North 75 degrees 28 minutes 20 seconds East, a distance of 104.95 feet to the POINT OF BEGINNING AND CONTAINING 9.84 acres (428,553 square feet) of land, more or less.