

PERFORMANCE AGREEMENT

This Performance Agreement (the "Agreement") is made effective on June 27, 2018 by and between LUBBOCK ECONOMIC DEVELOPMENT ALLIANCE, INC., a Texas nonprofit corporation (hereinafter referred to as "LEDA") and Bandera Ventures, LP, a Texas limited partnership, and its successors and assigns (hereinafter collectively referred to as "Developer"), by and through their duly authorized officers and affiliate organizations under the terms and conditions that follow.

1. **Applicable Law:** It is understood by and between the parties that the term "Act," as used herein, is intended to mean the Development Corporation Act of 1979, as amended. (Sec 501.001 et seq, Local Government Code, formerly Sec 5190.6, VACS.) The parties hereto covenant and agree to comply with the terms of the Act applicable to this Agreement.

2. **Parties:**

- A. LEDA, a Texas non-profit corporation as well as a tax exempt 501(c) 4 entity, was created by the City of Lubbock, Texas, as an Industrial Development Corporation under the Act for the purpose of creating and retaining positions and encouraging new businesses to be established in Lubbock, Texas, to stimulate business and commercial activities, as well as all other purposes allowed by the Act.
- B. Developer is negotiating a contract with LEDA in which LEDA agrees to sell, convey, transfer and assign to Developer, and Developer agrees to purchase and accept from Seller certain "Property" located in the Lubbock Business Park as referenced in Exhibit A, Purchase and Sale Agreement, paragraph 2. Furthermore, Developer agrees to build a speculative building on said Property (the "Project") in accordance with the terms and conditions set forth in said Purchase and Sale Agreement.
- C. Developer is a Texas limited partnership authorized to do business in Texas.

3. **Purpose:** The purpose for this Agreement is to formalize the agreements between LEDA and Developer for the payment of certain costs associated with Developer's Project and specifically state the covenants, representations of the parties, and the incentives associated with Developer's commitment to abide by the provisions of the Act and to abide by the terms of this Agreement which has been approved by the Board of Directors of LEDA as complying with the specific requirements of the Act. It is expressly agreed that this Agreement constitutes a single transaction. A failure to perform any obligation, which is Developer's to fulfill, by Developer may constitute a breach of the entire Agreement and terminate any further commitments by LEDA.

4. **Definitions:**

- A. The "Act" shall refer to the Development Corporation Act of 1979, as amended, as Sec 501.001 et seq, Local Government Code, formerly Sec 5190.6, VACS.
- B. "LEDA" shall refer to Lubbock Economic Development Alliance, Inc., a Texas non-profit corporation, created by the City of Lubbock as an "Industrial Development Corporation," pursuant to the Act.

- C. "Project" shall mean the project identified in Paragraph 2B, above.
- D. "Developer" shall refer to Bandera Ventures, LP and its successors and assigns, a Texas limited partnership authorized to do business in Texas, and the Developer party to this Agreement.
- E. "Term", as used herein, shall begin with the date of this Agreement, and end the earlier of three (3) years following Developer's obtaining its Certificate of Occupancy or on the sale of the Project in 4C herein (the "Termination Date") unless earlier breached by Developer's failure to perform.

5. **Representations of Developer:**

- A. Developer represents that it is authorized to do business in Texas and has authorization to enter into this Agreement on its behalf.
- B. Developer represents that it has sought from LEDA economic assistance pursuing Developer's Project.
- C. Developer represents that it has conferred with attorneys of its own choosing and is fully knowledgeable of the terms of the Act and understands the reporting requirements of the Act as set forth in Texas Code Ann. §313.032, as well as all conditions precedent and subsequent as required to be eligible for the incentives offered by LEDA, including the Payback Provisions in Section 10.
- D. Developer understands and agrees that any variations as to any term of this Agreement or any terms or conditions of the incentives as stated must be mutually agreed to in written supplements or addenda since no oral agreements, amendments, or representations will be binding on either party.
- E. Developer agrees to comply with the requirements and representations included in the Purchase and Sale Agreement, attached hereto as Exhibit A and incorporated herein as if copied in full.

6. **Representations by LEDA:**

- A. LEDA represents that it is established as an Industrial Development Corporation under the Act and further represents that the costs applied toward Developer's Project as stated in this Agreement have been found by the Board of Directors of LEDA sitting as fact finders have determined the Project to be in compliance with the requirements and purposes of the Act, the provisions of LEDA's charter, as well as for the benefit of the City of Lubbock, Lubbock County, Texas, and trade area.
- B. LEDA represents that it has authority to enter into this Agreement. LEDA understands and agrees that any variation in terms of this Agreement or the incentives offered to Developer or commitment by Developer will only be binding if mutually agreed to in

writing.

- C. LEDA represents that the real property described in Section 7 has gas, electric and communication services bordering such property.
- D. The site is eligible for Foreign Trade Zone designation. If Developer would like to apply for Foreign Trade Zone designation, LEDA would facilitate the application and activation process on behalf of Developer.

7. **Real Property:** LEDA shall convey approximately 10.85 acres of land as identified by Special Warranty Deed attached within Exhibit B and pursuant to the terms and conditions as set forth in the "Purchase and Sale Agreement" attached as Exhibit A. Such conveyance shall take place at a simultaneously closing. The obligations and rights of Developer under this Agreement shall be conditioned upon the parties closing on the transfer under the Purchase and Sale Agreement. Developer has the right and option to purchase the property identified as Lot 21, which is adjacent to the Property in the Lubbock Business Park, in accordance with the terms and conditions of the Purchase and Sale Agreement. Developer and LEDA agree that this Agreement shall apply to said Lot 21 in the event Developer elects to purchase said lot.

8. **Real Property Incentive to be Awarded and Terms of Award**

A. Incentive by LEDA:

LEDA hereby grants to Developer the Real Property identified by the Special Warranty Deed attached as Exhibit B for a purchase price of \$100.

B. Capital Incentive by Developer

Developer agrees to build a speculative building on the Real Property at the Lubbock Business Park and to market said building for lease or sale to future businesses.

9. **Conditions for Payment of Incentives:** It is specifically agreed and understood by and between the parties that LEDA has agreed to grant the purchase of real property strictly upon the following terms and conditions:

- A. Any use of LEDA's name for publicity in connection with Developer's business or activities must be approved in advance by LEDA. It is understood that LEDA may make known its contributions to Developer.
- B. Developer shall have delivered to LEDA evidence of its authority for the execution and performance of this Agreement, as well as timely delivery of all other information expressly called for in this Agreement.
- C. For the duration of this Agreement, in order to receive benefits hereunder, Developer must maintain its legal status under federal and state law duly and remain qualified to do business in the State of Texas.
- D. The operations or activities of Developer and its employees with respect to the Project

shall be performed and conducted in a professional and businesslike manner and shall be in keeping in all material respects with applicable federal and state laws and regulations, and any ordinances of the City of Lubbock and/or governmental entities which may have jurisdiction over operations and activities of the Project and the Developer.

- E. Developer certifies that the Developer does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended. If during the Term of this Agreement, Developer is convicted of a violation under 8 U.S.C. § 1324a(f), Developer shall repay the amount of the public subsidy provided under this Agreement, with interest at the legal pre-judgment interest rate, with reasonable attorney's fees, not later than the 120th day after the date LEDA notifies Developer of the violation.
- F. Any information obtained by LEDA or its agents or assigns during negotiations leading up to the execution of the Agreement or otherwise about the business, have or will be returned upon the execution of this Agreement, subject to a right to a continuing examination by LEDA in order to comply with LEDA's reporting obligations, if any. Such information shall be considered confidential and beyond the scope of any Open Records request as proprietary information.
- G. Developer will notify LEDA in writing within three (3) business days if an announcement is made that the Developer ceases construction of the speculative building.

10. Payback Provisions and Events of Default: Developer acknowledges that LEDA and Developer are required to remain in conformance with the statutory provisions of the Act. The parties hereto agree that in the event Developer fails to comply with the provisions of this Agreement, including but not limited to Paragraphs 5E, 9C, 9D, 9E or 11, and after written notice and failure to cure the violation continues for thirty (30) days after written notice to Developer, provided that if such violation can be cured but is not capable of being cured within said thirty (30) day period, Developer shall not be in default hereunder so long as Developer commences curative action within such thirty (30) day period, diligently and continuously pursues the curative action and fully and completely cures the violation within sixty (60) days after written is delivered to Developer, then LEDA, in its reasonable sole discretion, may terminate this Agreement. Should the provisions fail to be met by the Developer, after such notice and cure period, LEDA reserves the right to enter and take back possession of the Property provided Developer is reimbursed for all actual, out-of-pocket costs incurred by Developer to acquire, develop finance and lease the Property.

11. Assignment: This Agreement shall not be assignable, either in whole or in part, except this Agreement may be assigned to any affiliate of Developer or any successor or assign of Developer by merger, consolidation or transfer of all or substantially all of the assets. Any assignment not authorized by this Agreement shall not disqualify the remaining or new entity from applying to LEDA for new incentive consideration.

12. No Privity of Endeavor Nor Joint Venture: It is specifically agreed that there shall be no privity of endeavor nor joint venture whatsoever between LEDA and Developer and the sole connection between the parties is the contribution of the economic assistance by LEDA under the

restricted conditions as set forth herein and that such contributions as stated herein are for the sole purposes as set forth herein and it shall in no way be construed as a continuing basis of financial support by LEDA to Developer. The parties hereto have entered into this Agreement in an arms-length transaction. No agency relationship or fiduciary relationship is intended to be created by this Agreement and no such relationship shall be determined to exist.

13. **Good Faith -Normal Business Operations:** The parties agree that this Agreement has been entered into in good faith and that each party shall act in good faith in complying with its provisions. The parties further agree to transact all their business under and that which relates to this Agreement in accordance with their normal business operations.

14. **Miscellaneous Provisions:**

A. **Notices:**

For the purposes of any notices to be given, pursuant to the terms of this Agreement, the parties shall use the following addresses or any other address as may be changed by the parties, upon written notice to the other party, as follows:

(1) John Osborne
CEO and President
LUBBOCK ECONOMIC DEVELOPMENT ALLIANCE, INC.
1500 Broadway, 6th Floor
Lubbock, TX 79401

(2) With a copy to:

Ann Manning
Attorney at Law
Underwood Law Firm, PC
P.O. Box 16197
Lubbock, Texas 79490

(3) With a copy to:

Pryor Blackwell
Bandera Ventures, LP
5820 W. Northwest Highway, Suite 200
Dallas, Texas 75225

(4) With a copy to:

Munsch Hardt Kopf & Harr, P.C.
500 N. Akard, Suite 3800
Dallas, Texas 75201
Attn: Melissa Jenner

Notices shall be deemed to be given upon the placing in the United States Mail, Certified Mail,

Return Receipt Requested, to the above-described addresses or as may be changed, pursuant to the terms and conditions hereof.

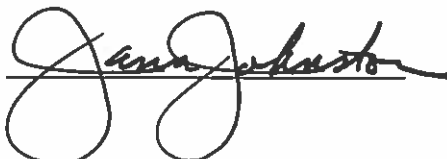
- B. Entire Agreement: This instrument constitutes the entire agreement between the parties hereto and neither this Agreement nor any of the Exhibits attached hereto, if any, can be altered, changed, or amended in any respect except by an instrument in writing duly executed by both parties.
- C. Governing Law and Performance: This Agreement shall be governed by the laws of the State of Texas and shall be deemed to be executed in and performance called for in Lubbock, Lubbock County, Texas.
- D. Partial Invalidity: In the event that any portion of this Agreement should be found or declared to be invalid for any reason, the remaining provisions of this Agreement shall remain in full force and effect and shall be binding upon the parties.
- E. Binding Effect: This Agreement shall be binding upon the undersigned, their successors and assign by merger, subject to the express terms of this Agreement concerning assignment.
- F. Force Majeure: If any default or performance of any other covenant or term of this Agreement is delayed by reason of strike, riots, shortages of labor, materials, supplies, or transportation, war, civil commotion, act of God, governmental restrictions, regulations, or interference, fire, or other casualty, or any other circumstances beyond a signatory party's control, then the duty to do or perform the term or covenant, regardless of whether the circumstance is similar to any of those enumerated above or not, is excused during the delay period and all timeframes for performance under this Agreement shall be extended accordingly.
- G. Time is of the Essence: The parties agree that time is of the essence in the execution of this Agreement.

EXECUTED in multiple counterparts, each of which is an original, on this 27th day of June, 2018.

LUBBOCK ECONOMIC DEVELOPMENT
ALLIANCE, INC.


John Osborne, CEO and President


ATTEST:



DEVELOPER:

Bandera Ventures, LP,
a Texas limited partnership

By: Bandera Ventures GP, LLC,
a Texas limited liability company
its general partner

By: 
Name: PRYOR BLACKWELL
Title: AUTHORIZED AGENT