

STATE OF TEXAS, COUNTY OF LUBBOCK
PERFORMANCE AGREEMENT

This Performance Agreement (the "Agreement") is made by and between LUBBOCK ECONOMIC DEVELOPMENT ALLIANCE, INC., a Texas nonprofit corporation (hereinafter referred to as "LEDA") and MTBC, Ltd., a Texas limited partnership, (hereinafter referred to as "Recipient"), by and through their duly authorized officers and affiliate organizations under the terms and conditions that follow. It shall be effective on the date it is executed by both LEDA and Recipient and if not on the same date then the latter of such dates shall constitute the "Effective Date".

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. Recipient is preparing a new project (the "Project"), which shall include the purchase and finish out of a 161,555 sq. ft. building located at 1104 Lubbock Business Park Boulevard, Lubbock Business Park, Lubbock, Texas (NAICS 48-49000), described as Lot 13, Lubbock Business Park, according to the Plat recorded in Document No. 2018038962, Official Public Records of Lubbock County, Texas (the "Property"). It is estimated that the Project will result in 125 new and relocated Primary Jobs for the City of Lubbock, with an estimated Annual Compensation of \$3,750,000. The total capital investment for the Project is estimated to be \$16,000,000.
- C. Recipient is a Texas limited partnership authorized to do business in Texas. The parties acknowledge that for tax, financial or business purposes, title to the Property may be acquired by a parent, subsidiary or affiliated entity of Recipient and leased by such entity to Recipient, which will be the operator of the Project to be constructed upon the Property, and LEDA hereby approves of such arrangement, provided nothing in such structure shall relieve Recipient of its obligations under this Agreement.

3. **Purpose:** The purpose for this Agreement is to formalize the agreements between LEDA and Recipient for the payment of certain costs associated with Recipient's Project and specifically state the covenants, representations of the parties, and the incentives associated with Recipient'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. A failure to perform any obligation by Recipient may constitute a breach of the entire Agreement and terminate any further commitments by LEDA.

LEDA  MTBC 

4. **Definitions:**

- A. "**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. "**Annual Compensation**" means the higher of actual compensation, annualized base pay or actual annualized pay, as determined in the sole but reasonable discretion of LEDA's accountants/representatives.
- C. "**Layoff**" is defined as an event, due to adverse or changing business conditions, that results in the loss of employment, but shall exclude loss of employment due to a casualty at the Project if the Recipient chooses to rebuild the Project. Employees meeting this definition shall have lost their jobs through no fault of their own.
- D. "**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.
- E. "**Measurement Date**" means the date on which a determination is made as to whether Recipient is in compliance with this Agreement. Measurement Dates shall be the month of January of the following years:
- (1) Year One: The January following the purchase of the Property and LEDA's receipt of a Certificate of Occupancy for the Project from the City of Lubbock.
 - (2) Year Two: The January following Year One.
 - (3) Year Three: The January following Year Two.
- F. "**Primary Jobs**" shall refer to a job that produces or distributes goods or provides services for customers that are predominantly outside the community of Lubbock, Texas.
- G. "**Project**" means the Project described in Paragraph 2(B), above.
- H. "**Property**" means the real property described in Paragraph 2(B), above.
- I. "**Recipient**" shall refer to MTBC, Ltd. a Texas limited partnership authorized to do business in Texas and shall include Recipient's subsidiaries and affiliates.
- J. "**Term**" shall begin on the Effective Date and end on December 31 of Year Three, as specified in Paragraph 4(E)(3) hereof (the "Termination Date"), unless earlier breached by Recipient's failure to perform.

5. **Representations of Recipient:**

- A. Recipient represents that it is authorized to do business in Texas and has authorization to enter into this Agreement on its behalf.

- B. Recipient represents that it has sought from LEDA economic assistance to pursue Recipient's Project.
- C. Recipient represents that it has conferred with attorneys of its choice, 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.
- D. Recipient 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. Recipient agrees to participate in any LEDA sponsored wage and benefit surveys, and with Recipient's prior written approval, Recipient agrees to participate in any marketing materials that focus on economic development for the City of Lubbock.
- F. Recipient agrees to close on the purchase of the Property prior to December 31, 2020 and secure a Certificate of Occupancy for the Project prior to May 31, 2021.

6. **Representations by LEDA:**

- A. LEDA represents that (i) it is established as an Industrial Development Corporation under the Act, and (ii) the costs applied toward Recipient's Project as stated in this Agreement have been found by the Board of Directors of LEDA sitting as fact finders to be in compliance with the requirements and purposes of the Act and 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 Recipient or commitment by Recipient will only be binding if mutually agreed to in writing.
- C. The site is eligible for Foreign Trade Zone designation. If Recipient would like to apply for Foreign Trade Zone designation, LEDA would facilitate the application and activation process on behalf of Recipient.
- D. Along with its partners, LEDA will provide assistance with workforce attraction, screening and interviewing to help Recipient in the initial hiring process.

7. **Capital Incentive to be Awarded and Terms of Award:**

LEDA hereby grants Recipient a potential incentive of \$375,000, with payments to be expressly made under the following terms and conditions:

LEDA  MTBC 

- A. LEDA shall pay Recipient \$125,000 in January of Year One, provided prior thereto, Recipient closed on the purchase of the Property and delivered to LEDA a copy of the Certificate of Occupancy for the Project issued by the City of Lubbock.
- B. Two (2) subsequent payments of \$125,000 each will be paid by LEDA to Recipient on January of Year Two and Year Three, subject to verification of the Annual Compensation required by Paragraph 7(C) below by LEDA's accountants and proof of payment of City of Lubbock property taxes.
- C. Recipient agrees to provide an Annual Compensation of \$3,300,000 on the Measurement Dates for Year Two and Year Three. If the actual Annual Compensation amount on each such Measurement Date is lower than \$3,300,000, then LEDA will reduce the amount of the capital investment incentive to be paid on such Measurement Date by \$3,000 for every \$100,000 below the required \$3,300,000 Annual Compensation.

8. Conditions for Payment of Incentive: LEDA and Recipient agree to the following terms and conditions:

- A. Any use of LEDA's name for publicity in connection with Recipient's business or activities must be approved in advance by LEDA. It is understood that LEDA may make known its contributions to Recipient in whatever public manner LEDA deems appropriate.
- B. Recipient must maintain a business location in the City of Lubbock or Lubbock County and its legal status under federal and state law duly and remain qualified to do business in the State of Texas.
- C. The operations or activities of Recipient and its employees shall be performed and conducted in a professional and businesslike manner and shall be in keeping with 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 Recipient.
- D. Recipient certifies that the Recipient 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, Recipient is convicted of a violation under 8 U.S.C. § 1324a(f), Recipient shall repay the amount of the public subsidy provided under this Agreement, with interest at the legal pre-judgment interest rate, with attorney's fees, not later than the 120th day after the date LEDA notifies Recipient of the violation.
- E. During the Term, LEDA's accountants may engage in a confidential review of relevant material records to confirm Recipient's compliance with this Agreement. LEDA's accountants will only have access to those records reasonably necessary to confirm such compliance. After written notice from LEDA's accountants,

Recipient agrees to provide LEDA's accountants access to conduct a confidential review.

- 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. Recipient will notify LEDA in writing within three (3) business days of any lay-off or reduction in force greater than 20% of the existing workforce related to this specific Project. The notification must include the number of employees being laid off, their job titles, the reasons for the lay-off and what the company is doing to assist the laid off employees.

9. **Events of Default:** Recipient acknowledges that LEDA and Recipient are required to remain in conformance with the statutory provisions of the Act. The parties hereto agree that in the event Recipient fails to comply with the provisions of this Agreement, including but not limited to Paragraphs 8C, 8D, 8E or 10, and after written notice and failure to cure the violation within a reasonable period of time after such notice, then LEDA, in its sole discretion, may terminate this Agreement.

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

11. **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 Recipient 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 Recipient. 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.

12. **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 which relates to this Agreement in accordance with their normal business operations.

LEDA  MTBC 

13. **Miscellaneous Provisions:**

A. **Notices:**

All notices or other communications required or permitted by this Agreement shall be in writing and delivered to the addressee at the addresses set forth below by either (a) hand-delivery, (b) a nationwide, overnight courier delivery service for delivery to the other party, (c) certified mail, return receipt requested, postage prepaid, or (d) by email, provided that (i) the subject matter of the email identifies it as "LEDA Agreement with MTBC, Ltd.", and (ii) unless the e-mail is acknowledged as received by the receiving party, a copy of the email is also sent on the date following its transmission by any of the other delivery methods. The addresses are:

To LEDA: John Osborne, CEO and President
Lubbock Economic Development Alliance, Inc.
1500 Broadway, 6th Floor
Lubbock, Texas 79401
Email: John@MarketLubbock.org

With copy to: Ann Manning
Attorney at Law
Underwood Law Firm, PC
P.O. Box 16197
Lubbock, Texas 79490
Email: AManning@UwLaw.com

To MTBC, Ltd.: Rafael Villoldo
6990 NW 25th Street
Miami, Florida 33122
Email: RV@DSTLLC.com

With copy to: Jose A. Bolanos
2121 Ponce de Leon Blvd., Ste. 950
Coral Gables, Florida 33134
Email: JBolanos@BolanosTruxton.com

Notices shall be deemed given either when (a) hand-delivered, with receipt acknowledged in writing, (b) two (2) business days after delivery to a nationwide, overnight courier delivery service or for next business day delivery, (c) two (2) business days following the date of mailing through first class US mail, or (d) the next business day following email transmission. Addresses may be changed pursuant to notices delivered to the parties.

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

LEDA  MTBC 

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. Notwithstanding anything contained herein to the contrary, should it be determined that LEDA cannot legally provide the benefit described in this Agreement and/or should funding for any of such benefits be terminated, then all future obligations of the Recipient shall be terminated.
- 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 party's performance of any covenant or term of this Agreement is delayed by reason of a strike, riots, shortages of labor, materials or supplies, war, civil commotion, act of God, governmental restrictions, regulations or interference, fire or other casualty, pandemic or any other circumstances beyond a 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. **Venue; Governing Law.** All payments made pursuant to this Agreement and other obligations performed under this Agreement shall be made or performed in the City of Lubbock, Lubbock County, Texas. Exclusive venue for any action, cause of action, lawsuit, or other proceeding under or in connection with this Agreement shall be and lie in Lubbock County, Texas and the parties hereby submit themselves to the jurisdiction thereof; and this Agreement shall be governed by and construed in accordance with the laws of the State of Texas without respect to the conflict of laws rules thereof. Recipient hereby waives and agrees not to assert by way of motion, as a defense, or otherwise, in any suit, action, or proceeding, any claim that (i) it is not subject to such venue or the jurisdiction of the courts of Lubbock County, Texas, (ii) the suit, action, or proceeding is brought in an inconvenient forum or (iii) the venue of the suit, action or proceeding is improper.
- H. **No Waiver of Immunity.** Notwithstanding any other provision of this Agreement, including, without limitation, the provisions of Section 9 of this Agreement, nothing in this Agreement shall or may be deemed to be or shall or may be construed to be, a waiver or relinquishment of any immunity, defense or tort

LEDA  MTBC 

limitation to which LEDA and the City, its elected officials, its officers, employees, representatives and agents are or may be entitled, including without limitation, any waiver of immunity suit.

- I. Time is of the Essence. Time is of the essence in the performance of this Agreement.

14. Option to Acquire Adjacent Property.

- A. LEDA hereby grants Recipient the right and option to receive, by grant and without the payment of consideration, approximately 12 acres owned by LEDA and located adjacent to and south of the Property and currently described as Lot 18 of Lubbock Business Park (the "Option Property"), subject to the terms hereof (the "Option").
- B. The term of the Option shall commence on the date Recipient acquires title to the Property and shall expire 5 years thereafter. Recipient must exercise the Option by written notice to LEDA.
- C. Closing on the conveyance of the Option Property to Recipient shall be as soon as feasible, not to exceed 120 days after Recipient's exercise of the Option.
- D. Within 9 months after receiving title to the Option Property, Recipient must submit plans to the City of Lubbock and the LEDA ARC as required under Lubbock Business Park Covenants (Declaration of Protective Covenants recorded January 3, 2007 as document No. 2007000124 and Amended Declaration recorded August 6, 2007 as document No. 2007031921, both in the Official Public Records of Lubbock County, Texas, attached as Exhibits A and B, respectively) for the construction of a building on such property, and within 18 months after receiving such title, Recipient must commence construction of such building on the Option Property and thereafter continuously proceed with such construction through completion.

If construction on the Option Property is not completed within 18 months of commencement, the Option Property will revert to LEDA.

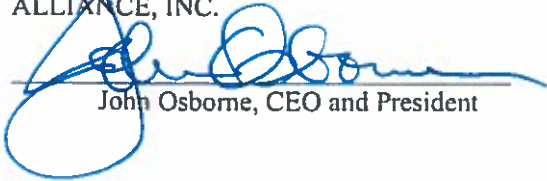
- E. If prior to Recipient's exercise of the Option, LEDA receives a binding third-party offer to purchase the Option Property (the "Offer"), then Recipient's Option shall become a right of first refusal. In such event, LEDA shall provide Recipient a copy of the Offer and Recipient shall have 30 days after receipt thereof to provide LEDA a binding contract to purchase the Option Property on the same terms as contained in the Offer. If Recipient fails to timely provide such contract then LEDA may proceed to sell the Option Property on the same terms as contained in the Offer, and Recipient's Option shall terminate upon LEDA's conveyance of the Option Property pursuant to the Offer, provided that if the terms of the Offer are materially changed or the Option Property is not conveyed pursuant to the Offer, then Recipient's Option shall continue in effect until the expiration of its 5 year term, further provided that the provisions of this paragraph shall apply to all subsequent

third-party offers for the Option Property which LEDA may receive prior to Recipient's exercise of the Option.

EXECUTED in multiple counterparts, each of which is an original, on the dates specified below, and PDF signatures shall be as valid as originals.

Date: May 27, 2020

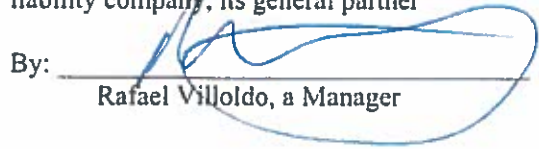
LUBBOCK ECONOMIC DEVELOPMENT
ALLIANCE, INC.



John Osborne, CEO and President

Date: May 20, 2020

MTBC, Ltd., a Texas limited partnership
By MLHM Beauty, LLC, a Delaware limited
liability company, its general partner



By: Rafael Villoldo, a Manager