

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

ECONOMIC DEVELOPMENT AGREEMENT

This Economic Development Agreement (“Agreement”) is made by and between the City of Farmers Branch, Texas (“City”) and B. Cannon LLC, a Texas limited liability corporation d/b/a Brianna Cannon (“Company”) (each a “Party” and collectively the “Parties”), acting by and through their respective authorized representatives.

WHEREAS, the Company intends to locate its business operations to a facility at 3320 Towerwood Drive, Farmers Branch, Texas, with building improvements consisting of approximately 8,450 square feet of space (hereinafter referred to as the “Premises”), used for its corporate headquarters; and

WHEREAS, the Company has advised the City that a contributing factor that would induce the Company to relocate or retain its headquarters at the Premises would be an agreement by the City to provide an economic development grant to the Company; and

WHEREAS, the retention and expansion of existing businesses within the City and the recruitment of new business enterprises to the City will promote economic development, stimulate commercial activity, generate additional sales and personal property taxes, and 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’s economic development program and will (i) further the objectives of the City; (ii) 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 are hereby acknowledged, the Parties agree as follows:

Article I
Definitions

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

“Grant” or “Grants” shall mean quarterly economic development grants to be provided by the City, each in an amount equal to fifty percent (50%) of the sales tax revenues generated by Company at the Premises and collected by the City for the Grant Period, to be paid as set forth herein.

“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 one hundred twenty (120) 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 one hundred twenty (120) days after the filing thereof.

“City” shall mean the City of Farmers Branch, Texas.

“Company” shall mean B. Cannon LLC, a Texas limited liability corporation authorized to conduct business in Texas.

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

“Expiration Date” shall mean the tenth (10th) anniversary date of this Agreement.

“Force Majeure” shall mean an event wholly or partially preventing a Party from the performance of any obligation or duty placed on such Party by reason of or through work strikes, stoppage of labor, riot, fire, flood, acts of war, insurrection, court judgment, or a government restriction, quarantine or mandatory closure order enacted in response to a pandemic or other public health crises, or other specific cause reasonably beyond the Party’s control and not attributable to its malfeasance, neglect or nonfeasance (each an event of “Force Majeure”). In the event of Force Majeure, the time for performance of such obligation (other than a payment obligation) may be extended for a period equal to the time lost by reason such event, provided, however, that the Party complies with the provisions herein. Specifically, the Party asserting Force Majeure (i) shall give prompt written notice to the other Party of the prevention of performance as soon as the asserting Party is reasonably aware of such prevention, and (ii) has the burden of demonstrating (1) how and why their performance was so prevented, (2) the period of time during which they were so prevented from performing (which under the facts may be equal to, or shorter or longer than, the duration of the Force Majeure event itself), and (3) that the Party used commercially reasonable efforts to mitigate and/or eliminate such prevention and resumed performance under this Agreement as soon as reasonably practicable. The failure to provide the notice required herein shall be deemed a forfeiture of any claim of Force Majeure.

“Grant Period” shall mean ten years of and from the Effective Date.

“Impositions” shall mean all taxes, assessments, use and occupancy taxes, charges, excises, license and permit fees, and other charges by a 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 the Company or any property or any business owned by Company within the City.

“Payment Request” shall mean a written request from Company to the City for payment the applicable quarterly Grant, which request shall be accompanied by copies of tax statements and/or receipt(s) and/or other evidence reasonably satisfactory to the City to establish that the amount requested has been generated from the Company’s facility at the Premises and collected by the City for the applicable quarter.

“Premises” shall mean the property located at 3320 Towerwood Drive, Farmers Branch, Texas, described as Lot 28 of Block 2 of the Brookhaven Business Park Phase 1 Subdivision/Addition to the City of Farmers Branch, Dallas County, Texas, with improvements consisting of approximately 8,450 square feet of space.

“Related Agreements” shall mean any agreement by and between the City and the Company or any of its affiliated or related entities.

“Required Use” shall mean the continuous use and occupancy of the Premises for the operation of offices, manufacturing and warehouse distribution, and retail point-of-sale of the Company, and other related uses in connection with the operation of the business of the Company.

“Sales Taxes” mean the City’s sales and use tax authorized by the Texas Tax Code, exclusive of sales and use taxes contributed by the City to regional transportation authorities or other political subdivisions entitled to receive any portion of the sales, use and excise taxes, and limited to the sales, use and excise taxes generated by retail sales and services paid for activities conducted exclusively within the boundary of the Premises by Company.

“State of Texas” shall mean the Office of the Texas Comptroller, or its successor.

“Taxable Items” shall mean both “taxable items” and “taxable services” as those terms are defined by Chapter 151, Texas Tax Code, as amended.

Article II

Term

The term of this Agreement (“Term”) shall begin on the last date of execution hereof (the “Effective Date”) and continue for a period of ten (10) years until the Expiration Date, unless sooner terminated as provided herein.

Article III Economic Development Grants

3.1 Quarterly Grants. (a) Subject to the continued satisfaction of all the terms and conditions of this Agreement, the City agrees to provide the Company with Grants which will be paid on a quarterly basis, following the City's receipt and verification of Sales Taxes, beginning in the first quarter following the Effective Date, and within thirty (30) days following the end of each quarter from which sales tax income may be calculated. Grants shall continue for the earlier of ten (10) years of and from the Effective Date or earlier termination of this Agreement.

3.2 Each quarterly Grant shall be in the amount of fifty percent (50%) of the Sales Taxes generated by the Company at the Premises and actually collected and received by the City.

3.3 The Company agrees to report to the City on a quarterly basis the amount of sales tax revenues generated by taxable sales tax events occurring within the Premises for the previous calendar quarter ("Retail Reports") beginning with the first quarter after the Effective Date. Such Retail Reports shall be based upon reports filed by Company or Company's tenants at the Premises (if any portion of the Premises are leased) with the State Comptroller's Office. If the Premises or any part thereof are leased, the Company shall not be obligated to obtain such reports directly from any tenants, but shall require tenants to provide the City a copy of the Sales Tax Permit that each tenant receives from the State, legibly showing (i) the sales tax number/tax identification number, and (ii) the location number. The parties agree that this sales tax permit information will enable the City to obtain from the State Comptroller's office an "Area Report" that identifies aggregate sales tax information within the Premises without disclosing individual business sales tax data. Unless required by law or court order, the City shall not disclose any Retail Reports or other financial information or any written summaries of individual owner/tenant sales. All financial reports shall be reviewed by the City on a gross basis. Grants under this Agreement shall be based solely on City's determination of the amount of sales and use tax received from the Premises.

3.4 The Grants described in this Agreement are economic development program grants made under and in accordance with Chapter 380 of the Texas Local Government Code. They are not pledges of tax revenues from any source. Any grant amount payable under this Agreement is a Chapter 380 program grant made in an amount that is equal to the actual Sales Taxes received by the City.

3.5 Protests. In the event the 1) Company protests or contests the imposition or amount of Sales Taxes, or any part thereof, which results in a determination that sales, use and excise taxes were overpaid, and that any prior Grant payment was in excess of the corrected amount, or 2) the City reasonably determines that the amount of a Grant(s) paid by the City to the Company was incorrect, the Company shall, within sixty (60) days after receipt of written notification thereof from the City specifying the amount by which such Grant exceeded the correct amount to which the Company was entitled (together with such records, reports and other information necessary to support such determination), pay such amount to the City or, at the City's sole discretion, offset an overpayment against future Grants. No recourse is available for

underpayment. If the Company disputes the City's determination of a corrected Grant and pursuant to this Section 3(b), the Parties shall seek to amicably resolve the matter.

3.6 Grant Limitations. Under no circumstances shall City obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Further, City shall not be obligated to pay any commercial bank, lender, or similar institution for any loan or credit agreement made by the Company. None of the City's obligations under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution.

3.7 Current Revenue. The Grants made hereunder shall be paid solely from lawfully available funds pursuant to Texas Constitution Article II, Section 52-a, and Texas Local Government Code Chapter 380. Consequently, notwithstanding this Agreement or any provision contained herein, the City shall have no obligation or liability to pay any Grants. This Agreement shall not be deemed to constitute a written contract for goods or services under Subchapter I, Chapter 271, Texas Local Government Code. The City shall not be required to pay any Grants if prohibited under federal or state legislation or a decision of a court of competent jurisdiction.

3.8 Indemnification and Release. THE COMPANY AGREES TO INDEMNIFY, RELEASE AND HOLD THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY FOR PURPOSE OF THIS SECTION, THE "CITY") HARMLESS FROM AND AGAINST ANY AND ALL REASONABLE LIABILITIES, DAMAGES, CLAIMS, LAWSUITS, JUDGMENTS, ATTORNEY FEES, COSTS, EXPENSES, AND DEMANDS BY THE STATE OF TEXAS THAT THE CITY HAS BEEN PAID ERRONEOUSLY, OVER-PAID OR INCORRECTLY ALLOCATED TAXES ATTRIBUTED TO THE PREMISES BY THE COMPANY AND/OR COMPANY AFFILIATES FOR ANY PERIOD DURING THE TERM OF THIS AGREEMENT OR DURING ANY GRANT PERIOD (COLLECTIVELY, A "CLAIM"), IT BEING THE INTENTION OF THE PARTIES THAT THE COMPANY SHALL BE RESPONSIBLE FOR THE REPAYMENT OF ANY GRANTS PAID TO THE COMPANY HEREIN BY THE CITY. THE INDEMNIFICATION PROVIDED ABOVE SHALL NOT APPLY TO ANY LIABILITY RESULTING SOLELY FROM THE ACTIONS OR OMISSIONS OF THE CITY; THE COMPANY SHALL BE OBLIGATED TO PAY REASONABLE ATTORNEY FEES AND OTHER THIRD-PARTY COSTS INCURRED BY THE CITY TO DEFEND OR CONTEST A CLAIM (COLLECTIVELY, THE "OTHER COSTS"). THE PROVISIONS OF THIS SECTION SHALL SURVIVE TERMINATION OF THIS AGREEMENT. THE PROVISIONS OF THIS SECTION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND DO NOT CREATE ANY OBLIGATIONS FROM OR GRANT ANY CONTRACTUAL OR OTHER RIGHTS TO ANY OTHER PERSON OR ENTITY, OTHER THAN OBLIGATIONS, IF ANY, THAT ARISE FROM THE COMPANY TO THE CITY TO PERFORM OBLIGATIONS CREATED BY THIS SECTION. COMPANY AGREES TO INDEMNIFY AND HOLD CITY HARMLESS FROM ALL CLAIMS, SUITS, AND CAUSES OF ACTION, LIABILITIES AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES, OF ANY NATURE WHATSOEVER ARISING UNDER THIS AGREEMENT OR OUT OF COMPANY'S PERFORMANCE OF THE CONDITIONS UNDER THIS AGREEMENT.

Article IV

Conditions to the Grants

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

4.1 Good Standing. The Company shall not have an uncured breach or default of this Agreement (provided that if any Grants are not paid at any time that an uncured breach or default of this Agreement exists, such Grants shall be paid to Company upon timely cure of such breach or default if the Agreement is not terminated for such uncured breach).

4.2 Minimum Full-Time Employees ("FTEs"). As a condition precedent to the payment of each Grant hereunder, the Company shall continuously employ FTEs after the Effective Date and throughout the Term of this Agreement. If no FTEs are maintained for a given Grant Period, the Company shall forfeit its right to the Grant for such Grant Period.

4.3 Minimum Investment. The Company shall invest in capital improvements in renovations to the Premises, additions to personal property, and business operations.

4.4 Required Use. During the Term of this Agreement following the Effective Date and continuing thereafter until the Expiration Date, the Premises shall be used for the Company's corporate headquarters, the display, manufacture and warehousing of products produced and sold by the Company, a point of sale of Company's merchandise, and accessory uses; and the operation and occupancy of the Premises in conformance with the Required Use shall not cease for more than thirty (30) consecutive days except in connection with and to the extent of an event of Force Majeure.

4.5 Continuous Occupancy. During the term of this Agreement following the Effective Date and continuing thereafter until the Expiration Date, the Company shall continuously occupy the Premises.

4.6 Impositions. The Company shall not be in default in the payment of any Imposition.

4.7 Payment Request. The Company shall, as a condition precedent to the payment of the Annual Grants, as the case may be, provide the City with the applicable Payment Request.

Article V

Termination; Repayment

5.1 Termination. This Agreement terminates on the Expiration Date, and may, prior to the Expiration Date, be terminated upon any one or more of the following:

- (a) by mutual written agreement of the Parties;

- (b) upon written notice by either Party, if the other Party defaults or breaches any of the terms or conditions of this Agreement and such default or breach is not cured within sixty (60) days after written notice thereof;
- (c) upon written notice by City, that the Company shall have become delinquent of any Imposition or local, state or federal taxes and such delinquency is not cured within ten (10) business days after written notice thereof (provided, however, Company retains the right to timely and properly protest and contest ad valorem taxes);
- (d) upon written notice by City, if Company suffers an event of Bankruptcy or Insolvency; or
- (e) 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 Offsets. The City may at its option, offset any amounts due and payable under this Agreement against any debt (including taxes) lawfully due to the City from the 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 the City has been reduced to judgment by a court; provided that the City shall provide reasonable prior notice of any such offset.

5.3 Termination and Recapture. (a) In the event that this Agreement is terminated for any reason prior to payment of any quarterly Grant, the obligation of the City to fund said Grant or any future Grant shall cease immediately. In the event that this Agreement is terminated by the City based upon Company's or an assignee's or successor in interest's breach, default or failure to meet any one or more of the Company's Obligations of Article IV hereof, the City shall have no obligation to fund the Grant or any part thereof and, if all or any portion of the Grant has been paid to Company, then Company or its assignee or successor in interest shall immediately upon notice refund all Grants paid within the preceding twenty (20) quarters. There is no recourse for City default; if the City defaults in the payment of any Grant amount hereunder, Company may not bring a cause of action against the City, and, in consideration of receiving Grants hereunder, waives, releases and holds harmless all officers, directors, employees, personnel and representatives of the City from any and all claims, liabilities, losses, and damages of any kind or nature (including but not limited to attorney's fees and costs), of all kinds and nature arising in any way from this Agreement.

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.

6.2 Limitations of 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

the City assumes no responsibilities or liabilities to third parties in connection with these actions. Except for the City's obligations to pay the Grant proceeds as set forth in this Agreement, the City and the City and all past, present and future officials, officers, employees and agents make no warranties and assume no responsibilities or liabilities to Company or any third party in connection with the Premises or Company's operations conducted thereon. It is acknowledged and agreed by the parties that the terms of this Agreement are not intended to and shall not be deemed to create any partnership or joint venture among the parties and neither party shall in any way be deemed an agent of the other. Company acknowledges and agrees that there shall be no personal recourse to the officials, officers, employees or agents of the City or the City, who shall incur or assume no liability in respect of any claims based upon or relating to this Agreement. Nothing in this Agreement is intended, and nothing herein shall in any way be deemed, to confer or create any rights in any person not a party to this Agreement.

6.3 The parties acknowledge and agree that the City's obligations and performance under this agreement are governmental and not proprietary functions, it being that the City's intent and purpose in this Agreement is economic development to broaden the City's tax base, secure employment opportunities, and to promote local economic development and stimulate business and commercial activity on a local and regional basis.

6.4 Nothing in this Agreement shall be deemed to be a waiver of any defenses or immunities held by the City, whether sovereign, governmental, official, qualified or otherwise, all such defenses and immunities being expressly retained.

6.5 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. The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto.

6.6 Notice. Any notice required or permitted to be delivered hereunder shall be in writing and shall be given by either Party via an express mail service, courier, or certified mail, return receipt requested, or by confirmed facsimile, to the respective Party at the address specified below (or to such other Party or address as either Party may designate in writing). All notices given pursuant to this section shall be deemed effective on the date such notice is actually received or otherwise hand-delivered:

If intended for City, to:

Attn: Ben Williamson
City Manager
13000 William Dodson Parkway
Farmers Branch, Texas 75234

With a copy to:

David M. Berman
Nichols, Jackson
500 N. Akard Street, Ste 1800
Dallas, Texas 75201

If intended for Company, to:

B. Cannon LLC
3320 Towerwood Dr.
Farmers Branch, TX 75234

6.7 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.

6.8 Governing Law. The Agreement shall be governed by the laws of the State of Texas, without giving effect to any conflicts of law rule or principle that might result in the application of the laws of another jurisdiction; and exclusive venue for any action concerning this Agreement shall be in the state district courts of Dallas County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said court.

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

6.10 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.

6.11 Successors and Assigns. Neither this Agreement nor the Grants may not be assigned without the prior written consent of the City; however notwithstanding the foregoing, this Agreement may be assigned without the consent of the City to a successor of Company, provided: (i) such successor has assumed in writing the obligations and liabilities of the Company hereunder in a form reasonably approved by the City; and (ii) Company has provided City ten (10) days prior written notice thereof. If the Company discloses to the City that it intends to assign this Agreement to a successor and/or discloses the identity of a potential successor, the City shall treat such information (including, but not limited to the fact that the Company is considering the applicable transaction and the identity of the potential successor) as disclosed in confidence and shall not disclose such information to any third parties except: (i) with the prior written consent of the Company and/or (ii) as and to the extent required by law. For purposes of this Section "Successor" shall mean: (i) an entity that is the result of a conversion of the Company from one form of business entity to a different form of business entity (such as from a corporation to a limited liability company) recognized by, and qualified to do business in, the State of Texas, (ii) any successor corporation or other entity resulting from a merger, consolidation, or acquisition with respect to Company, or (iii) a person or entity that purchases all or substantially all of either (A) the equity of the Company or (B) the assets of the Company.

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

6.13 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.

6.14 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.

6.15 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 Grants provided herein and any other funds received by the Company from the City as of the date of such violation within 120 business days after the date the Company is notified by the City of such violation, plus interest at the rate of 6% compounded annually from the date of violation until paid. The Company is not liable for a violation of this section by a subsidiary, affiliate, or franchisee of the Company or by a person with whom the Company contracts.

6.16 Nothing in this Agreement shall be deemed or construed to be the grant, approval or authorization of any permit, plan, application, Imposition or entitlement absent (i) full compliance with all statutes, regulations and requirements and (ii) final approvals from all appropriate building, code and zoning officials and entities.

6.17 No Waiver. A party's failure to insist on strict performance of this Agreement or to exercise any right or remedy upon breach of this Agreement will not constitute a waiver of the performance, right, or remedy. A party's waiver of the other party's breach of any provision in this Agreement will not constitute a continuing waiver or a waiver of any subsequent breach of the same or any other provision. A waiver is binding only if set forth in a writing signed by the waiving party.

6.18 Prior Agreements Superseded. Any prior Grant agreement, including but not limited to the Economic Development Incentive Agreement dated June 7, 2017, are superseded by this Agreement, and any obligations and rights of recapture or repayment set forth therein are waived, released and discharged.

(Signatures on following page)

EXECUTED and effective as of the last date of signature hereinbelow.

CITY OF FARMERS BRANCH, TEXAS

By: _____
Benjamin Williamson, City Manager

Date: _____

ATTEST

APPROVED AS TO FORM:

By: _____
Stacy Henderson, City Secretary

By: _____
David M. Berman, City Attorney

B. CANNON LLC

By: _____
_____, its _____