

PERFORMANCE AGREEMENT

This **PERFORMANCE AGREEMENT** by and between the **LITTLE ELM ECONOMIC DEVELOPMENT CORPORATION**, a Texas non-profit corporation (hereinafter referred to as the "LEEDC"), and **LAKEFRONT ICE CREAM LLC**, d/b/a Stella's Ice Cream, a Texas limited liability company (hereinafter referred to as "Developer"), is made and executed on the following recitals, terms and conditions.

WHEREAS, LEEDC is an economic development corporation operating pursuant to Chapter 504 of the Texas Local Government Code, as amended (also referred to as the "Act"), and the Texas Non-Profit Corporation Act, as codified in the Texas Business Organizations Code, as amended; and

WHEREAS, Section 501.103 of the Texas Local Government Code, in pertinent part, defines the term "project" to mean "expenditures that are found by the board of directors to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises, limited to: (1) streets and roads, rail spurs, water and sewer utilities, electric utilities, or gas utilities, drainage, site improvements, and related improvements; (2) telecommunications and Internet improvements . . ."; and

WHEREAS, Section 501.158 of the Texas Local Government Code prohibits the provision of a direct incentive unless LEEDC enters into an Agreement with Developer providing at a minimum a schedule of additional payroll or jobs to be created or retained by LEEDC's investment; a schedule of capital investments to be made as consideration for any direct incentives provided by LEEDC to Developer; and a provision specifying the terms and conditions upon which repayment must be made should Developer fail to meet the agreed to performance requirements specified in this Agreement; and

WHEREAS, Developer has applied to LEEDC for financial assistance necessary for the construction of Qualified Expenditures, as defined herein, to the Property generally located at 303 E. Eldorado Parkway, Suite 102, Town of Little Elm, Texas (hereinafter referred to as the "Property"); and

WHEREAS, the LEEDC's Board of Directors have determined the reimbursement provided to Developer for the Qualified Expenditures made to the Property is consistent with and meets the definition of "project" as that term is defined in Section 501.103 of the Texas Local Government Code; and the definition of "cost" as that term is defined by Section 501.152 of the Texas Local Government Code; and

WHEREAS, Developer agrees and understands that Section 501.073(a) of the Texas Local Government Code requires the Town Council of the Town of Little Elm, Texas, to approve all programs and expenditures of the LEEDC, and accordingly this Agreement is not effective until Town Council has approved this project at a Town Council meeting called and held for that purpose.

NOW, THEREFORE, for and in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the LEEDC and Developer agree as follows:

SECTION 1. FINDINGS INCORPORATED.

The foregoing recitals are hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration and promises that bind the parties.

SECTION 2. TERM.

This Agreement shall be effective as of the Effective Date, and shall continue thereafter until **December 31, 2028**, unless terminated sooner under the provisions hereof.

SECTION 3. DEFINITIONS.

The following words shall have the following meanings when used in this Agreement.

- (a) **Act.** The word “Act” means Chapters 501 to 505 of the Texas Local Government Code, as amended.
- (b) **Agreement.** The word “Agreement” means this Performance Agreement, together with all exhibits and schedules attached to this Performance Agreement from time to time, if any.
- (c) **Developer.** The words “Developer” mean Lakefront Ice Cream LLC, a Texas limited liability company, d/b/a Stella’s Ice Cream, its successors and assigns, whose address for the purposes of this Agreement is 303 E. Eldorado Parkway, Suite 102, Little Elm, Texas 75068.
- (d) **Effective Date.** The words “Effective Date” mean the date of the latter to execute this Agreement by and between the LEEDC and Developer.
- (e) **Event of Default.** The words “Event of Default” mean and include any of the Events of Default set forth below in the section entitled “Events of Default.”
- (f) **Full-Time Equivalent Employment Positions.** The words “Full-Time Equivalent Employment Position” or “Full-Time Equivalent Employment Positions” mean and include a job requiring a minimum of One Thousand Nine Hundred Twenty (1,920) hours of work averaged over a twelve (12) month period.
- (g) **LEEDC.** The term “LEEDC” means the Little Elm Economic Development Corporation, a Texas non-profit corporation, its successors and assigns, whose corporate address for the purposes of this Agreement is 100 W. Eldorado Parkway, Little Elm, Texas 75068.

- (h) **Property.** The word “Property” means 303 E. Eldorado Parkway, Suite 102, Little Elm, Texas.
- (i) **Qualified Expenditures.** The words “Qualified Expenditures” mean those expenditures consisting of tenant finish out expenses and those expenses which otherwise meet the definition of “project” as that term is defined by Section 501.103 of the Act, and the definition of “cost” as that term is defined by Section 501.152 of the Act.
- (j) **Term.** The word “Term” means the term of this Agreement as specified in Section 2 of this Agreement.

SECTION 4. AFFIRMATIVE COVENANTS OF DEVELOPER.

Developer covenants and agrees with LEEDC that, while this Agreement is in effect, it shall comply with the following terms and conditions:

- (a) **Construction of Qualified Expenditures.** Developer covenants and agrees to construct or cause to be constructed the Qualified Expenditures located on the Property for an amount not less than **Three Hundred Thousand and No/100 Dollars (\$300,000.00)**. Further, Developer covenants and agrees to submit upon request to the LEEDC invoices, receipts, or other documentation for the Qualified Expenditures made to the Property in an amount of not less than **Three Hundred Thousand and No/100 Dollars (\$300,000.00)** and in a form acceptable to the Town by **December 31, 2024**.
- (b) **Certificate of Occupancy.** Developer covenants and agrees to obtain or cause to be obtained by **December 31, 2024**, a Certificate of Occupancy from the Town of Little Elm, Texas, for a minimum of 1,617 square feet of Lakefront Ice Cream retail space located on the Property.
- (c) **Operate Retail Facility.** Developer covenants and agrees by **December 31, 2024**, and during the Term of this Agreement to keep open to the general public during normal operating hours the Lakefront Ice Cream retail facility located on the Property.
- (d) **Job Creation and Retention.** Developer covenants and agrees by **December 31, 2024**, and during the Term of this Agreement to employ and maintain a minimum of **three and one-half (3.5)** Full-Time Equivalent Employment Positions working at the Property. Developer covenants and agrees beginning on **February 1, 2025**, and during the Term of this Agreement, Developer shall deliver to LEEDC an annual compliance verification signed by a duly authorized representative of Developer that shall certify the number of Full-Time Equivalent Employment Positions, and shall disclose and certify the average wage for all Full-Time Equivalent Employment Positions (the “Annual Compliance Verification”). The Developer covenants and agrees beginning on **February 1, 2025**, and annually thereafter during the Term of this Agreement, there will be a total of **four (4)** Annual Compliance Verifications due and submitted to LEEDC covering the Full-Time Equivalent Employment Positions created and maintained during the Term of this

Agreement. All Annual Compliance Verifications shall include quarterly IRS 941 returns, or Texas Workforce Commission Employer Quarterly Reports.

- (e) **Chamber of Commerce Membership.** Developer agrees to obtain and maintain a Pontoon level annual membership or higher with the Little Elm Chamber of Commerce for the Term of this Agreement.
- (f) **Performance Conditions.** Developer agrees to make, execute and deliver to LEEDC such other promissory notes, instruments, documents and other agreements as LEEDC or its attorneys may reasonably request to evidence this Agreement.
- (g) **Performance.** Developer agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements between Developer and LEEDC.

SECTION 5. AFFIRMATIVE COVENANTS OF LEEDC.

LEEDC covenants and agrees with Developer that, while this Agreement is in effect, LEEDC shall comply with the following terms and conditions:

- (a) **Financial Assistance.** LEEDC covenants and agrees to submit reimbursement for Qualified Expenditures made by the Developer pursuant to Section 4(a) of this Agreement, in an amount not to exceed the lesser of **Eighty Thousand Eight Hundred Fifty and No/100 Dollars (\$80,850.00)** or the aggregate amount of said invoices, receipts, or other documentation submitted by the Developer to LEEDC within thirty (30) days of receipt of said documentation required by and consistent with Section 4(a) of this Agreement.
- (b) **Performance.** LEEDC agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements by and between LEEDC and the Developer.

SECTION 6. CESSATION OF ADVANCES.

If LEEDC has made any commitment to make any reimbursement to Developer, whether under this Agreement or under any other agreement, LEEDC shall have no obligation to advance or disburse financial assistance if: (i) Developer becomes insolvent, files a petition in bankruptcy or similar proceedings, or is adjudged bankrupt; or (ii) an Event of Default occurs.

SECTION 7. EVENTS OF DEFAULT.

Each of the following shall constitute an Event of Default under this Agreement:

- (a) **General Event of Default.** Failure of Developer or LEEDC to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement, or failure of Developer or LEEDC to comply with or to perform any other term, obligation, covenant or

condition contained in any other agreement by and between Developer and LEEDC is an Event of Default.

- (b) **False Statements.** Any warranty, representation, or statement made or furnished to LEEDC by or on behalf of Developer under this Agreement that is false or misleading in any material respect, either now or at the time made or furnished is an Event of Default.
- (c) **Insolvency.** Developer's insolvency, appointment of receiver for any part of Developer's property, any assignment for the benefit of creditors of Developer, any type of creditor workout for Developer, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Developer is an Event of Default.
- (d) **Ad Valorem Taxes.** Developer allows its ad valorem taxes owed to the Town of Little Elm, Texas, to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of such taxes and to cure such failure within thirty (30) days after written notice thereof from LEEDC and/or Denton County Central Appraisal District is an Event of Default.

SECTION 8. EFFECT OF AN EVENT OF DEFAULT.

In the event of default under Section 7 of this Agreement, the non-defaulting party shall give written notice to the other party of any default, and the defaulting party shall have thirty (30) days to cure said default. Should said default remain uncured as of the last day of the applicable cure period, and the non-defaulting party is not otherwise in default, the non-defaulting party shall have the right to immediately terminate this Agreement. In the event, Developer defaults and is unable or unwilling to cure said default within the prescribed time period, the amounts provided by LEEDC to Developer pursuant to Section 5(a) of this Agreement shall become immediately due and payable by Developer to LEEDC as follows:

- (1) Event of Default occurs between Effective Date and **December 31, 2025**, Developer repays one hundred percent (100%) of financial assistance or **Eighty Thousand Eight Hundred Fifty and No/100 Dollars (\$80,850.00)**;
- (2) Event of Default occurs between **January 1, 2026** and **December 31, 2026**, Developer repays seventy-five percent (75%) of financial assistance or **Sixty Thousand Six Hundred Thirty Seven and 50/100 Dollars (\$60,637.50)**;
- (3) Event of Default occurs between **January 1, 2027** and **December 31, 2027**, Developer repays fifty percent (50%) of financial assistance or **Forty Thousand Four Hundred - Twenty Five and No/100 Dollars (\$40,425.00)**; and
- (4) Event of Default occurs between **January 1, 2028** and **December 31, 2028**, Developer repays twenty-five percent (25%) of financial assistance or **Twenty Thousand Two Hundred Twelve and 50/100 Dollars (\$20,212.50)**.

SECTION 9. INDEMNIFICATION.

Developer shall indemnify, save, and hold harmless LEEDC, its directors, officers, agents, attorneys, and employees (collectively, the "Indemnitees") from and against: (i) any and all claims, demands, actions or causes of action that are asserted against any Indemnatee if the claim, demand, action or cause of action directly or indirectly relates to tortious interference with contract or business interference, or wrongful or negligent use of LEEDC's financial assistance by Developer or its agents and employees; (ii) any administrative or investigative proceeding by any governmental authority directly or indirectly related, to a claim, demand, action or cause of action in which LEEDC is a disinterested party; (iii) any claim, demand, action or cause of action which directly or indirectly contests or challenges the legal authority of LEEDC or Developer to enter into this Agreement; and (iv) any and all liabilities, losses, costs, or expenses (including reasonable attorneys' fees and disbursements) that any Indemnatee suffers or incurs as a result of any of the foregoing; provided, however, that Developer shall have no obligation under this Section to LEEDC with respect to any of the foregoing arising out of the gross negligence or willful misconduct of LEEDC or the breach by LEEDC of this Agreement. If any claim, demand, action or cause of action is asserted against any Indemnatee, such Indemnatee shall promptly notify Developer, but the failure to so promptly notify Developer shall not affect Developer's obligations under this Section unless such failure materially prejudices Developer's right to participate in the contest of such claim, demand, action or cause of action, as hereinafter provided. If requested by Developer in writing, as so long as no Default or Event of Default shall have occurred and be continuing, such Indemnatee shall in good faith contest the validity, applicability and amount of such claim, demand, action or cause of action and shall permit Developer to participate in such contest. Any Indemnatee that proposes to settle or compromise any claim, demand, action, cause of action or proceeding for which Developer may be liable for payment of indemnity hereunder shall give Developer written notice of the terms of such proposed settlement or compromise reasonably in advance of settling or compromising such claim or proceeding and shall obtain Developer's concurrence thereto.

SECTION 10. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

- (a) **Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.
- (b) **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Denton County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Denton County, Texas.
- (c) **Assignment.** This Agreement may not be assigned without the express written consent of

the other party.

- (d) **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. Developer warrants and represents that the individual or individuals executing this Agreement on behalf of Developer has full authority to execute this Agreement and bind Developer to the same. LEEDC warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind it to the same.
- (e) **Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of the Agreement.
- (f) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- (g) **Notices.** Any notice or other communication required or permitted by this Agreement (hereinafter referred to as the "Notice") is effective when in writing and (i) personally delivered either by facsimile (with electronic information and a mailed copy to follow) or by hand or (ii) three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified with return receipt requested, and addressed as follows:

if to LEEDC:

Little Elm Economic Development Corporation
100 W. Eldorado Parkway
Little Elm, Texas 75068
Attn: Jennette Espinosa, Executive Director
Telephone: (214) 975-0455

if to Developer:

Lakefront Ice Cream, LLC
2701 Little Elm Parkway, Suite 100-498
Little Elm, Texas 75068
Attn: Pavana Vennapusa
Telephone: (515) 231-9531

- (h) **Severability.** If a court of competent jurisdiction finds any provision of this Agreement to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Agreement in all other respects shall remain valid and enforceable.
- (i) **Time is of the Essence.** Time is of the essence in the performance of this Agreement.
- (j) **Undocumented Workers.** 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 plus interest, at the rate of six percent (6%), not later than the 120th day after the date the LEEDC notifies Developer of the violation.

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THE PARTIES ACKNOWLEDGE HAVING READ ALL THE PROVISIONS OF THIS AGREEMENT, AND THE PARTIES HEREBY AGREE TO ITS TERMS. THIS AGREEMENT IS EFFECTIVE AS OF THE EFFECTIVE DATE PROVIDED HEREIN.



LEEDC:

***LITTLE ELM ECONOMIC
DEVELOPMENT CORPORATION,***
a Texas non-profit corporation

By: _____
Ken Eaken, President
Date Signed: July 8, 2024

ATTEST:

Jennette Espinosa, Executive Director

STATE OF TEXAS §
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COUNTY OF DENTON §

This instrument was acknowledged before me on the 8th day of July, 2024, by Ken Eaken, President of the Little Elm Economic Development Corporation, a Texas non-profit corporation, on behalf of said non-profit corporation.

Natasha Leigh Roach
Notary Public, State of Texas



APPROVED BY TOWN OF LITTLE ELM, TEXAS:

Curtis J. Cornelious, Mavor

Date Signed: _____

ATTEST:

Caitlan Biggs, Town Secretary



DEVELOPER:

LAKEFRONT ICE CREAM LLC,

d/b/a Stella's Ice Cream,

a Texas limited liability company,

By: D. Pau Kim
Name: PAVANA VENNA PUSA
Member
Date Signed: 6/10/24

STATE OF TEXAS

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COUNTY OF DENTON

This instrument was acknowledged before me on the 10th day of June, 2024, by PAVANA VENNA PUSA of Lakefront Ice Cream LLC, a Texas limited liability company, a Texas limited liability company, on behalf of said company.

Smruti Shete
Notary Public, State of Texas

