

## PERFORMANCE AGREEMENT

This Performance Agreement (this "Agreement") is dated as of \_\_\_\_\_, 2014, and is entered into by and among Pflugerville Community Development Corporation (the "PCDC"), a Section 4B corporation incorporated under the Development Corporation Act, as amended from time to time (the "Act"), Lauren Concrete L.P., a Texas Limited Partnership ("Lauren")

### RECITALS

PCDC has determined that it is in the best interests of PCDC and the City of Pflugerville, a Texas home rule municipal corporation in Travis County, Texas (the "City"), to facilitate LAUREN in relocating their corporate headquarters the "LAUREN Headquarters") to be located in the Corporate Limits of Pflugerville, Texas.

PCDC has determined that the addition of the LAUREN Headquarters within the City will provide significant economic benefits and will further economic development in the City. The economic benefits of the LAUREN Site within the City will include, without limitation, the proceeds received by the City from the ad valorem taxes levied upon the LAUREN Site and equipment located on the LAUREN Site and the creation of high paying good jobs in the City.

PCDC, and LAUREN have agreed to enter into this Agreement to define certain incentives to LAUREN and to further define certain obligations of the parties to this Agreement with respect to such incentives.

### AGREEMENT

#### I. Performance Agreement

1. *Performance Agreement.* This Agreement serves as a performance agreement by the parties hereto in accordance with Section 501.158 of the Act.
2. *LAUREN Headquarters Requirement.* LAUREN hereby agrees that within 6 months after the execution of this agreement, LAUREN shall relocate its Headquarters to the City of Pflugerville and shall obtain a certificate of occupancy for same from the City (provided that PCDC shall not cause the City to unreasonably withhold, condition or delay the issuance of the certificate of occupancy or any other approvals or permits and PCDC agrees to use commercially reasonable efforts to support LAUREN's applications or submissions to the City in connection with this project).

3. After the relocation of the LAUREN Headquarters and issuance of the certificate of occupancy, LAUREN shall operate at the LAUREN Site for at least 5 years. The foregoing shall be considered LAUREN's Headquarters Requirement". Upon satisfaction of the Headquarters Requirement, this Agreement shall be considered fully performed by LAUREN and LAUREN shall not have any further obligations hereunder and the "clawback" provisions set forth in Article III and in Article IV under the "Undocumented Workers Section" shall terminate in all respects.
4. *Jobs.* Lauren agrees to relocate at least 5 full time jobs with medical benefits to within the Corporate Limits of the City of Pflugerville within 6 months of the execution of this agreement.

**II.**  
**Benefit**

1. *Reimbursement of Property Acquisition Fees.* In consideration for LAUREN's agreement to satisfy the Headquarters Requirement, PCDC hereby agrees to reimburse LAUREN (or its affiliate) for land acquisition cost incurred by LAUREN up to \$300,000.00 (the "Reimbursement Fund"). Reimbursement payments shall be paid within 30 days of LAUREN presenting PCDC with a copy of the receipts for such expenses.
2. PCDC's total payments to LAUREN with respect to the Development Fee Reimbursement Fund Incentive shall not exceed \$300,000.
3. *LAUREN Temporary Office.* PCDC shall sublet office space to Lauren at 203 W. Main, Suite E, Pflugerville, Texas for up to 18 months at no cost to Lauren. The approximately 2,000 sq. ft. space shall be fully available no later than June 15, 2014 but LAUREN's move-in may occur sooner as time and space allows.

**III.**  
**PENALTY**

In the event that (i) LAUREN fails to fulfill the LAUREN Headquarters, or (ii) LAUREN otherwise fails to comply with its obligations pursuant to this Agreement, and such failure is not cured within 30 days of written notice thereof from PCDC to LAUREN (or if such failure cannot be reasonably cured within 30 days, but LAUREN commences cure of such failure within such 30 day period and diligently pursues the cure thereof, an additional 90 days to cure such failure after the expiration of the initial 30 day period), then in any such event, LAUREN will immediately pay to PCDC the amount of the Development Fee Reimbursement Fund and free rent.

**IV.**  
**MICELLANEOUS**

*Representations and Warranties.* This Agreement is being entered into pursuant to Section 40 of the Act. PCDC hereby represents and warrants to LAUREN that this Agreement is within its authority and that PCDC has been duly authorized and empowered to enter into this Agreement. LAUREN hereby represents and warrants to PCDC that this Agreement is within its authority and that LAUREN has been duly authorized and empowered to enter into this Agreement. LAUREN acknowledges that the Agreement may be terminated and payment may be withheld if this certification is inaccurate.

*Mutual Assistance.* PCDC and LAUREN will each do all things reasonably necessary and appropriate to carry out the terms and provisions of this Agreement.

*Successor and Assigns.* This Agreement shall be binding upon and inure to the benefit of the respective legal representatives, successors, assigns, heirs, and devisees of the parties. Neither party hereto may assign this Agreement without the prior written consent of the other party hereto; provided, however, that this Agreement may be wholly assigned by LAUREN and without the consent of PCDC to the extent such assignment is in connection with the sale of substantially all of the assets of LAUREN and further provided that the acquirer assumes all of the respective obligations of LAUREN and under this Agreement. For purposes of this paragraph, a merger or conversion of LAUREN shall not be considered an assignment. Additionally, in the event any lender of LAUREN and/or requires that LAUREN collaterally assign this Agreement as security for a loan, PCDC agrees to execute and deliver a collateral assignment to such lender in a form reasonably acceptable to PCDC.

*Representations and Warranties* by LAUREN. LAUREN warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its formation and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver the Agreement, and the individual executing the Agreement on behalf of LAUREN has been duly authorized to act for and bind LAUREN. LAUREN acknowledges that the Agreement may be terminated and payment may be withheld if this certification is inaccurate.

*Franchise Tax Certification.* LAUREN certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the Texas Tax Code, or that it is exempt from the payment of such taxes, or that it is an out-of-state entity that is not subject to the Texas Franchise Tax, whichever is applicable. LAUREN acknowledges that the Agreement may be terminated and payment may be withheld if this certification is inaccurate.

*Payment of Debt or Delinquency to the Local or State Government.* LAUREN agrees that any payments owing to LAUREN under this Agreement with the City of Pflugerville may be applied directly toward any debt or delinquency that LAUREN owes the State of

Texas, Travis County, Williamson County the City of Pflugerville or any other political subdivision of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.

*Child Support Certification.* LAUREN hereby certifies that none of the principals of the corporation is delinquent in their court ordered child support obligations and shall acknowledge that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

*Severability.* If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible, the remainder of this Agreement shall be given the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Agreement shall be deemed not to be a waiver of such party's right to enforce against the other party the same or any other such term or provision.

*Governing Law.* This Agreement shall be governed, construed, applied, and enforced in accordance with the laws of the State of Texas, and shall be performable with venue in Travis County, Texas.

*Third Party Beneficiaries.* This Agreement is not intended to give or confer any benefits, rights, privileges, claims, actions or remedies to any person or entity as a third party beneficiary.

*Amendments.* This Agreement may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought.

*Time.* Time is of the essence in the performance of this Agreement.

*Attorneys Fees.* Should any party employ attorneys to enforce any of the provisions hereof, the party losing in any final judgment agrees to pay the prevailing party all reasonable costs, charges and expenses, including reasonable attorneys' fees, expended or incurred in connection therewith.

*Notice and Payments.* All notices hereunder must be in writing and shall be deemed delivered on the day personally delivered on the third day from the day sent by registered mail or certified mail, return receipt requested with the U.S. Postal Service, or on the day after the day sent by national overnight courier, to the parties at the following addresses, or at such other addresses as shall be specified by notice.

If notice or payment to the PCDC:

Pflugerville Community Development Corporation  
Attention: Executive Director  
203 West Main Street, Suite E  
P.O. BOX 1160  
Pflugerville, Texas 78691

If notice or payment to LAUREN:

Attention: Ryan Bartholomew  
2001 Picadilly Drive  
Round Rock, Texas 78664

With Copy to:

Attention: Ronnie Klatt  
2001 Picadilly Drive  
Round Rock, Texas 78664

*Construction.* The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto. PCDC, LAUREN are referred to herein sometimes as the "parties." LAUREN shall be considered collectively as a "party" and PCDC shall be considered a "party."

*Counterpart Execution.* This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all such counterparts shall constitute one Agreement.

*Performance.* Performance by PCDC under the Agreement is dependent upon the approval of the City Council of the City of Pflugerville (Council). If the Council fails to approve this Agreement within forty-five (45) days of the date hereof, then either party may terminate the Agreement without further duty or obligation hereunder (the "Council Approval Period"). LAUREN acknowledges that the approval of this document is beyond the control of PCDC. In the event PCDC obtains approval of this Agreement within the Council Approval Period, PCDC shall provide a copy of such approval to LAUREN and the right of either party to terminate this Agreement pursuant to this paragraph shall terminate.

*Undocumented Workers.* Pursuant to Chapter 2264 of the Texas Government Code, LAUREN certifies that they will not knowingly employ any undocumented workers. LAUREN further agrees that if the business, or a branch, division, or department of the business, is convicted of a violation under 8 U.S.C. Section 1324a(f), LAUREN shall repay the amount of the public subsidy with interest, at the rate of ten percent (10%) per annum from the date this agreement is entered into, not later than the 120th day after the date the public agency, state or local taxing jurisdiction, or economic development corporation notifies the business of the violation.

*Force Majeure.* Any provision in this Agreement to the contrary notwithstanding, if a party is delayed in the performance of an obligation under this agreement due to an

event of Force Majeure, that party will be given an extension of one day for each day in which the party was unable to perform its obligation due to the event of Force Majeure. "Force Majeure" means act of war, civil disobedience, insurrection, act of terrorism, act of God, strike, prolonged drought, or prolonged or extreme weather conditions, delay by governmental authorities in issuing permits or approvals or other event beyond the reasonable control of a party giving rise to a delay in performance that was not foreseeable and that could not have been avoided through the exercise of reasonable care.

*Conditioned Upon Purchase Agreement.* The effectiveness of this Agreement is conditioned upon execution and delivery of the Purchase Agreement by and between PCDC and Lauren. In the event the Purchase Agreement is terminated, this Agreement shall be terminated in all respects without any further obligation of the parties.

*Legal Description.* The parties agree that the legal description is sufficient for describing the LAUREN Site. At such time as the final plat is recorded pursuant to the terms of the Purchase Agreement, the legal description in this Agreement shall automatically be replaced with the platted legal description.

[Signature Page Follows]

DATED this \_\_\_\_ day of \_\_\_\_\_, 2014.

Lauren Concrete L.P.

By:

Name:

Title: President

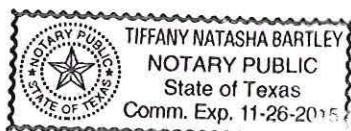
Ronnie Klaff

STATE OF TEXAS

COUNTY OF TRAVIS

BEFORE ME, the undersigned authority, on this day personally appeared Ronnie Klaff, President of Lauren Concrete L.P., a Texas Limited Partnership, known to me to be the person whose name is subscribed to the foregoing instrument, and sworn and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated and as the act and deed of the corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 10 day of  
October, 2014.



Tiffany Natasha Bartley

Notary Public in and for  
The State of Texas

PFLUGERVILLE COMMUNITY DEVELOPMENT CORPORATION  
A Texas Economic Development Corporation

By:  
Name:  
Title:

Omar Pena  
President

Omar Pena

STATE OF TEXAS

COUNTY OF TRAVIS

BEFORE ME, the undersigned authority, on this day personally appeared Omar Pena, President of the Pflugerville Community Development Corporation, a Section 4B corporation incorporated under the Development Corporation Act of 1979, known to me to be the person whose name is subscribed to the foregoing instrument, and swore and acknowledged to me that he executed the same for the purpose and consideration therein expressed, and in the capacity therein stated and as the act and deed of the Pflugerville Community Development Corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 8<sup>TH</sup> day of  
July, 2014.

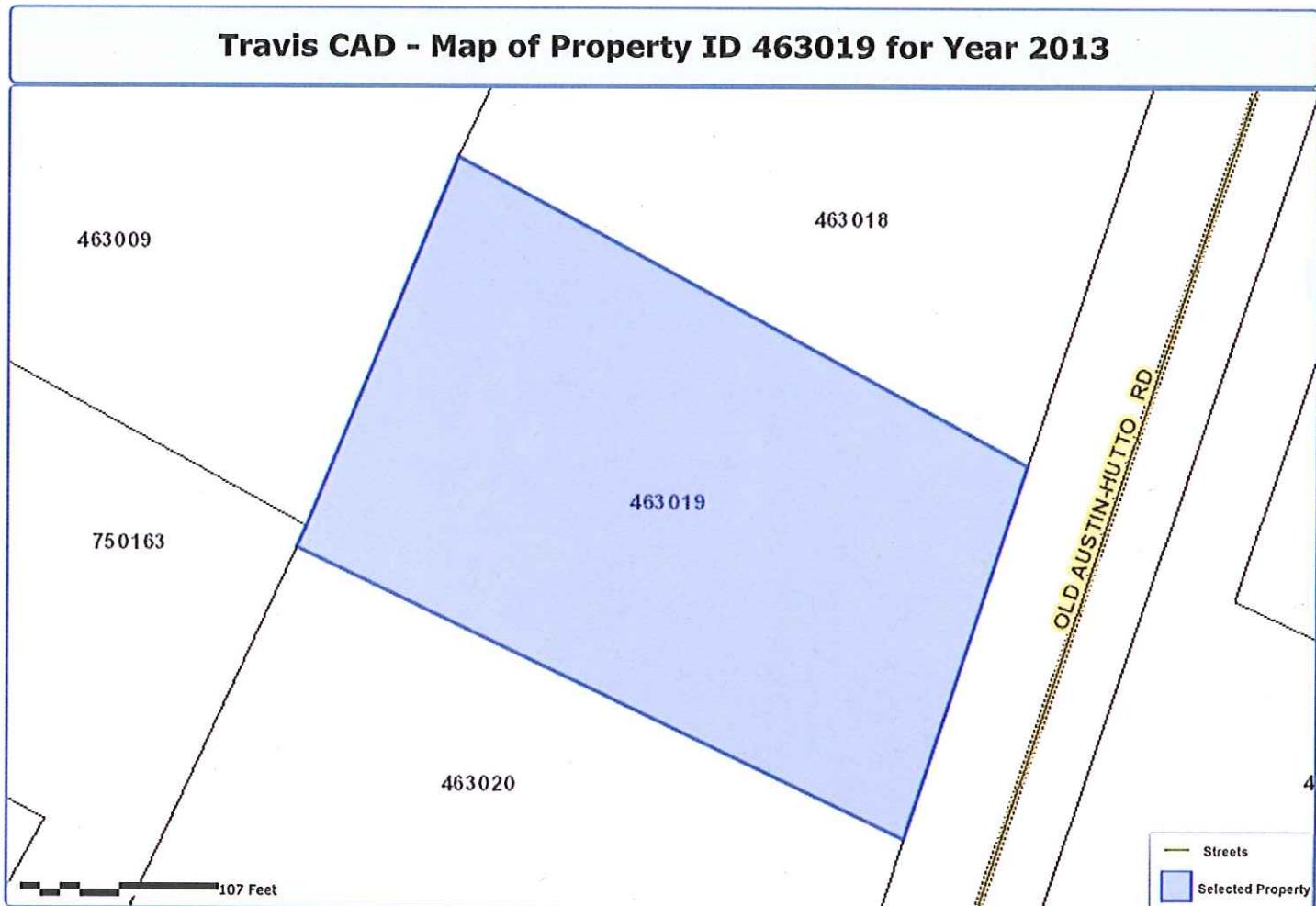
Karen S. Thompson  
Notary Public in and for  
The State of Texas



**EXHIBIT A**

**Legal Description**  
[See Attached]

## Exhibit A



### Property Details

#### Account

Property ID: 463019  
Geo ID: 0272460804

Type: Real

Legal Description: LOT 10 BLK A 685 BUSINESS PARK

#### Location

Situs Address: 1000 OLD AUSTIN-HUTTO RD TX 78660  
Neighborhood: WAREHOUSE <20,000 SF

Mapsco: 438T

Jurisdictions: 19, 20, 9B, 03, 0A, 2J

#### Owner

Owner Name: WIGGINS VENTURES OF TEXAS LP  
Mailing Address: 5626 MITCHELLDALE ST, HOUSTON, TX 77092-7028

#### Property

Appraised Value: \$837,352.00

<http://propaccess.traviscad.org/Map/View/Map/1/463019/2013>

Map Disclaimer: This tax map was compiled solely for the use of TCAD. Areas depicted by these digital products are approximate, and are not necessarily accurate to mapping, surveying or engineering standards. Conclusions drawn from this information are the responsibility of the user. The TCAD makes no claims, promises or guarantees about the accuracy, completeness or adequacy of this information and expressly disclaims liability for any errors and omissions. The mapped data does not constitute a legal document.

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