

PERFORMANCE AGREEMENT

This Performance Agreement (this "Agreement") is entered into by and between Pflugerville Community Development Corporation (the "PCDC"), a Section 4B corporation incorporated under the Development Corporation Act of 1979 (the "Act"), and, Spirit of Texas, a Texas corporation ("RUM").

RECITALS

PCDC has determined that it is in the best interests of PCDC and the City of Pflugerville, a Texas Home Rule City in Travis County Texas (the "City"), to facilitate the Marketing of a Pflugerville Distilled Rum. RUM has determined that it is in RUM's best interests to market its "Pecan Street Rum" in Central Texas. PCDC has determined that the marketing of Pecan Street Rum will provide significant economic benefits and will further economic development in the City. The economic benefits of RUM to the City will include, without limitation, the proceeds received by the City from the ad valorem taxes levied upon the premises and equipment of the RUM Facilities, and the maintenance of permanent full-time jobs within the City at the RUM Facilities.

PCDC and RUM have agreed to enter into this Agreement in connection with RUM marketing Pecan Street Rum and to further define certain obligations of the parties to this Agreement with respect to RUM and such incentives. This Agreement is required pursuant to Section 40 of the Act.

AGREEMENT

I.

Performance Agreement

1. This Agreement serves as a performance agreement by the parties hereto.
2. RUM hereby agrees, on or before July 1, 2012, to : (i) Commence a Marketing Campaign to promote Pflugerville and Pecan Street Rum. (ii) To conspicuously display the name "Pflugerville" on the label of each bottle of Pecan Street Rum and other spirits that may be distilled in Pflugerville and on all marketing material, (iii) provide PCDC with representative copies of all marketing materials displaying the name "Pflugerville" in a conspicuous manner.
3. RUM hereby agrees to provide PCDC with an accounting of all PCDC funds used for marketing and promotion of Pecan Street Rum under this agreement no later than December 1, 2012.

II.
Benefit

1. In consideration for RUM's agreement to satisfy the above mentioned performance agreement, PCDC hereby agrees to give RUM \$30,000 to market Pflugerville and Spirit of Texas Distilled Spirits.
2. PCDC's payments to RUM shall be capped at \$30,000.

III.
PENALTY

In the event that (i) RUM 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 RUM, then in any such event, RUM will immediately pay to PCDC the amount of the Benefit.

IV.
MICELLANEOUS

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

Mutual Assistance. PCDC and RUM 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.

Representations and Warranties by RUM. If RUM is a corporation or a limited liability company, RUM warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization 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 RUM has been duly authorized

to act for and bind RUM. RUM acknowledges that the agreement may be terminated and payment may be withheld if this certification is inaccurate.

Franchise Tax Certification. A corporate or limited liability company RUM 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 the corporation or limited liability company is exempt from the payment of such taxes, or that the corporation or limited liability company is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable. RUM 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. RUM agrees that any payments owing to RUM under an agreement with the City of Pflugerville may be applied directly toward any debt or delinquency that RUM 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. RUM hereby certifies that none of the officers of the corporation are delinquent in their court ordered child support obligations and shall acknowledge that any agreement with the city 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.

Notices 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 to the PCDC:
Pflugerville Community Development Corporation
Attention: Director
203 West Main Street, Suite C
P.O. BOX 1160
Pflugerville, Texas 78691

With copy to:
Floyd Akers
City Attorney
P. O. Box 679
Pflugerville, Texas 78691-0679

If notice to RUM:

with copy to:

All payments to the PCDC required under this agreement shall be made to:

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

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.

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, then PCDC shall issue written notice to RUM and PCDC may terminate the Agreement without further duty or obligation hereunder. RUM acknowledges that the approval of this document is beyond the control of PCDC.

Undocumented Workers. Pursuant to Chapter 2264 of the Texas Government Code, RUM certifies that they will not knowingly employ any undocumented workers. RUM 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), RUM 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.

DATED this _____ day of _____, 2012.

Spirit of Texas Inc.
A Texas Corporation

By: _____
Name: _____
Title: _____

PFLUGERVILLE COMMUNITY DEVELOPMENT CORPORATION
A Texas Economic Development Corporation

By: _____
Name: Omar Pena
Title: President

STATE OF TEXAS,

COUNTY OF TRAVIS.

BEFORE ME, the undersigned authority, on this day personally appeared _____ of Spirit of Texas, Inc., a Texas corporation, 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 _____ day of _____, 2012.

Notary Public in and for
The State of Texas

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 _____ day of _____, 2012.

Notary Public in and for
The State of Texas