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ECONOMIC DEVELOPMENT PERFORMANCE AGREEMENT

This Performance Agreement ("Agreement") is entered into to be effective as of the Effective Date (as defined in Article III below), by and between the Seabrook Economic Development Corporation, located in Harris County, Texas (hereinafter called "SEDC"), a Texas non-profit industrial development corporation under the Development Corporation Act and governed by TEX. LOC. GOV. CODE chapters 501, 502 and 505 and the Texas Non-Profit Corporation Act and TP NAILS, doing business at 1706 MAIN STREET, SEABROOK, TEXAS 77586,(hereinafter called "Business"), otherwise collectively known as the "Parties" to this Agreement.

RECITALS

WHEREAS, the Development Corporation Act of 1979, as amended (Section 501.001 et seq., Texas Local Government Code, formerly the Development Corporation Act of 1979) (the "Act") authorizes a development corporation to fund certain projects as defined by the Act and requires development corporations to enter into performance agreements to establish and provide for the direct incentive or make an expenditure on behalf of a business enterprise under a project; and

WHEREAS, Section 501.158 of the Act requires a performance agreement to provide, at a minimum, for a schedule of additional payroll, jobs to be created or retained, and/or capital investment to be made as consideration for any direct incentives provided or expenditures made by the corporation under the agreement, and to specify the terms under which repayment must be made if the business enterprise does not meet the performance requirements specified in the agreement; and

WHEREAS, the SEDC is a Type B Corporation, with a population of 20,000 or less, and is authorized to create Projects that include land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements found by it's Board to promote new or expanded business development; and

WHEREAS, the COVID-19 National Disaster has caused Business in Seabrook, Texas, to temporarily close and/or experience reductions in sales, workforce, capital development and/or development; and

WHEREAS, Business desires to retain its number of employees and payroll, as well as its capital investment, to the numbers and amounts prior to the National Disaster declaration and COVID-19 pandemic crisis; and

WHEREAS, providing Business with the funds under this Agreement will contribute to the City of Seabrook by helping retain jobs and increase employment back to the numbers prior to the COVID-19 National Disaster, promoting and developing expanded business enterprises, increased development, increased real property value and tax revenue for the City of Seabrook, and will have both a direct and indirect positive overall improvement/stimulus in the local and state economy; and

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WHEREAS, the SEDC desires to offer an incentive to Business to enable Business to retain and/or increase its employees and payroll to the numbers prior to the COVID-19 National Disaster declaration, to train its employees on how to conduct business, and promote new or expanded business development during such a National Disaster and pandemic pursuant to this Agreement in substantial conformity with the Act; and

WHEREAS, the Parties are executing and entering into this Agreement to set forth certain terms and obligations of the Parties with respect to such matters; and

WHEREAS, the Parties recognize that all agreements of the Parties hereto and all terms and provisions hereof are subject to the laws of the State of Texas and all rules, regulations and interpretations of any agency or subdivision thereof at any time governing the subject matters hereof; and

WHEREAS, the Parties agree that all conditions precedent for this Agreement to become a binding agreement have occurred and been complied with, including all requirements pursuant to the Texas Open Meetings Act and all public notices and hearings, if any, have been conducted in accordance with Texas law; and

WHEREAS, on the Effective Date, the commitments contained in this Agreement shall become legally binding obligations of the Parties.

NOW, THEREFORE, in consideration of the mutual covenants, benefits and agreements described and contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and further described herein, the Parties agree as follows:

ARTICLE I
RECITALS

1. Recitals. The recitals set forth above are declared true and correct by the Parties and are hereby incorporated as part of this Agreement. The application and related documents submitted by Business are hereby incorporated by reference and relied upon by SEDC in entering into this Agreement.

ARTICLE II
AUTHORITY AND TERM

2. Authority. The SEDC's execution of this Agreement is authorized by the Act and constitutes a valid and binding obligation of the SEDC. The SEDC acknowledges that Business is acting in reliance upon the SEDC's performance of its obligations under this Agreement in making the decision to commit substantial resources to the establishment of the "Project" in the above recitals.

3. Term. This Agreement shall become enforceable upon the Effective Date,

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hereinafter established, and shall continue until the Expiration Date, hereinafter established, unless terminated sooner or extended by mutual agreement of the Parties in the manner provided for herein.

4. Purpose. The purpose of this Agreement is to formalize the agreements between the Business and the SEDC for the granting of funds to cover certain costs associated with the Project, as defined hereafter, and specifically state the covenants, representations of the Parties, and the incentives associated with Business'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 SEDC and the Business as complying with the specific requirements of the Act. It is expressly agreed that this Agreement constitutes a single transaction. A failure to perform any obligation by the Business, or any misrepresentation by it may constitute a breach of the entire Agreement and terminate any further commitments (if any) by the SEDC unless an alternative penalty or remedy is provided for herein.

5. Administration of Agreement. Upon the Effective Date, the SEDC delegates the administration and oversight of this Agreement to the Executive Director of the SEDC, or its designee. Any proposed amendments to the Agreement shall require the approval of the Board of Directors of the SEDC.

ARTICLE III
DEFINITIONS

As used in this Agreement, the following terms shall have the meanings ascribed below. All undefined terms shall retain their usual and customary meaning as ascribed by common and ordinary usage.

"Anniversary/Year" - Performance and incentive calculations based upon years and anniversaries as used in this Agreement shall be calculated with the year and date beginning on the date the last party signs this agreement and first anniversary is twelve (12) months from that date, and so on with each year and anniversary from that date forward.

"Bankruptcy" 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 ninety (90) 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 ninety (90) days after the filing thereof.

"Default", unless otherwise specifically defined or limited by this Agreement, shall mean failure by any Party to timely and substantially comply with any performance requirement, duty, or covenant.

"Effective Date" shall be the date of the last signing by a party to the agreement.

"Expiration Date" shall mean the earlier of:

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1. The first anniversary of the Effective Date; or
2. The date of termination, provided for under Article VI of this Agreement.

"Force Majeure" shall mean any contingency or cause beyond the reasonable control of a party, including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of a party), fires, explosions or floods, strikes, slowdowns or work stoppages.

"Job Creation Incentive" means that money provided to the Business as an incentive for the creation and retention of workers and labor force in Seabrook, Texas.

"Project" shall mean the Business's promise and agreement herein to use the COVID-19 relief funds awarded by the SEDC to contribute to the City of Seabrook by helping retain jobs and increase employment back to the numbers prior to the COVID-19 National Disaster, as well as to train its employees on how to conduct business safely and in accordance with Center for Disease Control standards during this and any future similar National Disaster declaration.

ARTICLE IV
SEDC OBLIGATION

COVID-19 Relief Award. SEDC shall pay a one-time payment of $ 3,500 ("Incentive"), to Business as its COVID-19 relief funds in accordance with the Project, which shall be made available via direct deposit or mailed by check by the City of Seabrook. **The Incentive shall not be used for Business owner salaries.**

Job Creation Incentive. This Incentive is being awarded to Business for it to expand to the size, enterprise and/or revenue levels experienced by the Business prior to the National Disaster declaration and COVID-19 pandemic crisis that caused economic and business retraction. This Incentive is being provided to promote or develop new or expanded business enterprise that create or retain primary jobs in substantial conformity with the Act. Business is obligated to retain jobs or increase its employment or payroll back, or business enterprise back, to the numbers prior to the COVID-19 National Disaster, as referenced in its application documents, as well as to train its employees on how to conduct business safely and in accordance with Center for Disease Control standards during this and any future similar National Disaster declaration.

Business further agrees to provide SEDC, upon request, with the following information on or before the Expiration Date:

(a) 2020 ad valorem tax receipt showing Business's personal property taxes paid for 2020 (should be available February 2021 at latest);

(b) February 2021 Texas Comptroller of Public Accounts sales tax receipt; and,

(c) Texas Workforce Commission's Unemployment Tax Services Employer's

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Quarterly Report filed January 2021 (or comparable TWC statement or receipt showing payroll numbers for January 2021).

3. Confidentiality. The SEDC agrees to the extent allowed by law to keep all tax information and documentation received, pursuant to this Agreement hereof, confidential. In the event a request is made for such information, SEDC will not disclose the information unless required to do so by the Attorney General of Texas or law.

4. Current Revenue. The funds distributed hereunder shall be paid solely from lawfully available funds of the SEDC. Under no circumstances shall the obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. None of the obligations under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution.

ARTICLE V
COVENANTS AND DUTIES

1. Business's Covenants and Duties. Business makes the following covenants and warranties to the SEDC, and agrees to timely and fully perform the obligations and duties contained in Article IV of this Agreement. Any false or substantially misleading statements contained herein or failure to timely and fully perform those obligations and duties within this Agreement shall be an act of Default by the Business.

(a) Business is authorized to do business and is in good standing in the State of Texas and shall remain in good standing in the State of Texas and the United States of America during any term of this Agreement.

(b) The execution of this Agreement has been duly authorized by Business's authorized agent, and the individual signing this Agreement is empowered to execute such Agreement and bind the entity. Said authorization, signing, and binding effect is not in contravention of any law, rule, regulation, or of the provisions of Business's by-laws, or of any agreement or instrument to which Business is a party to or by which it may be bound.

(c) Business is not a party to any Bankruptcy proceedings currently pending or contemplated, and Business has not been informed of any potential involuntary Bankruptcy proceedings.

(d) To its current, actual knowledge, and subject to the Certificate of Occupancy (or other approvals and permits to be obtained under subpart (f) immediately below), Business has acquired and maintained all necessary rights, licenses, permits, and authority to carry on its business in the City of Seabrook and will continue to use its best efforts to maintain all necessary rights, licenses, permits, and authority.

(e) Business shall timely and fully comply with all of the terms and conditions of this Agreement.

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(f) Business shall cooperate with the SEDC, in a timely manner, in providing all necessary information to assist them in complying with this Agreement.

(g) During the term of this Agreement, Business agrees to not knowingly employ any undocumented workers as part of the Project, and, if convicted of a violation under 8 U.S.C. Section 1324a(1), Business shall be in Default (subject to the obligations in Article IV and the remedies in Article VII). Business is not liable for an unknown violation of this Section by a subsidiary, affiliate, or franchisee of Business or by a person with whom Business contracts; provided, however, that identical federal law requirements provided for herein shall be included as part of any agreement or contract which Business enters into with any subsidiary, assignee, affiliate, or franchisee for which funds provided herein will be used.

(h) Pursuant to Section 2270.002, Texas Government Code, the SEDC/City may not enter into a contract for goods or services unless the contract contains a written verification that the contracting party: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. By executing this Agreement, Business verifies that it does not boycott Israel and will not boycott Israel during the term of this Agreement.

(i) Pursuant to Section 2252.152, Texas Government Code, Business warrants, represents, and agrees that it is not identified on a list prepared and maintained by the Texas Comptroller of Public Accounts as a company that engages in business with Sudan, Iran or a foreign terrorist organization.

(j) Business shall not be in arrears and shall be current in the payment of all City taxes and fees.

(k) SEDC has the right to periodically (and with reasonable advance notice) verify the terms and conditions of this Agreement, and Business specifically shall timely make its payroll/employment records available to SEDC upon its request.

(l) Business shall repay all relief funds should a Chapter 501-505, et seq., Section 505.160 petition be filed within the sixty (60) day publication and protest period, and Business agrees that these funds are being distributed prior to the sixty (60) day publication period ending.

2. Compliance and Default. Failure by Business to timely comply with any performance requirement, duty, covenant or any misrepresentation shall be considered an act of Default and shall give the SEDC the right to terminate this Agreement and collect the Recapture Amount, as determined by the Board of Directors of the SEDC.

ARTICLE VI
TERMINATION

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1. Termination. This Agreement shall terminate upon the earliest occurrence of any one or more of the following:

(a) The written agreement of the Parties;

(b) The Agreement's Expiration Date;

(c) Default by Business (at the option of the SEDC).

ARTICLE VII
DEFAULT

1. Business Events of Default.

(a) Failure of Business to perform under this Agreement.

(b) SEDC determines that any representation or warranty contained herein or in any financial statement, certificate, report or opinion submitted to SEDC in connection with or pursuant to the requirements of this Agreement was incorrect or misleading in any material respect when made; or

(c) Any judgment is assessed against Business or any attachment or other levy against the property of Business with respect to a claim remains unpaid, unstayed on appeal, undischarged, not bonded or not dismissed for a period of thirty (30) days; or

(d) Business makes an assignment for the benefit of creditors; admits in writing its inability to pay its debts generally as they become due; files a petition in bankruptcy; is adjudicated insolvent or bankrupt; petitions or applies to any tribunal for any receiver or any trustee of Business or any substantial part of its property, commences any action relating to Business under any reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction whether now or hereafter in effect; or if there is commenced against Business any such action and such action remains undismissed or unanswered for a period of sixty (60) days from such filing, or Business by any act indicates its consent to or approval of any trustee of Business or any substantial part of its property; or suffers any such receivership or trustee to and such appointment remains unvacated for a period of sixty (60) days; or

(e) Business substantially changes its present ownership without prior written notification to SEDC within thirty (30) days of such change; or

(f) Business changes the general character of business as conducted at the date hereof, or engages in any type of business not reasonably related to its business as presently and normally conducted, as determined by SEDC.

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2. Remedies for Default.

(a) In the event of Default by the Business, the SEDC shall, as its sole and exclusive remedy for Default hereunder, have the right to terminate this Agreement and to recapture one hundred percent (100%) of the Job Creation Incentive (the "Recapture Amount") if the Default occurs on or prior to the termination date.

(b) Business agrees a remedy for Default includes the SEDC seeking a mandamus from a court of competent jurisdiction; or the appointment of a receiver in equity with the power to charge and collect rents, purchase price payments, and loan payments; and, apply the revenue from the Project in accordance with this Agreement, together with all other remedies provided by law.

ARTICLE VIII
MISCELLANEOUS

1. Binding Agreement. The terms and conditions of this Agreement shall be binding on and inure to the benefit of the Parties, and their respective successors and assigns. The Executive Director or Board Chair of the SEDC shall be responsible for the administration of this Agreement and shall have the authority to execute any instruments, duly approved by the SEDC, on behalf of the Parties related thereto.

2. Mutual Assistance. The Parties will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out such terms and provisions.

3. Representations and Warranties. The SEDC represents and warrants to Business that this Agreement is within their authority, and that they are duly authorized and empowered to enter into this Agreement, unless otherwise ordered by a court of competent jurisdiction. Business represents and warrants to the SEDC that it has the requisite authority to enter into this Agreement.

4. Assignment. Business shall have the right to assign all of its rights, duties, and obligations under this Agreement to a duly qualified third party with prior written approval of the SEDC. Any assignment provided for herein shall not serve to enlarge or diminish the obligations and requirements of this Agreement, nor shall they relieve Business of any liability to the SEDC, including any required indemnity in the event that any Assignee hereof shall at any time be in Default of the terms of this Agreement. The SEDC may demand and receive adequate assurance of performance including the deposit or provision of financial security by any proposed Assignee prior to its approval of an assignment.

5. Independent Contractors.

(a) It is expressly understood and agreed by all Parties hereto that in performing their services hereunder, Business at no time will be acting as an agent of the SEDC and that all consultants or contractors engaged by Business respectively will be

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independent contractors of Business; and nothing contained in this Agreement is intended by the Parties to create a partnership or joint venture between the Parties and any implication to the contrary is hereby expressly disavowed. The Parties hereto understand and agree that the SEDC will not be liable for any claims that may be asserted by any third party occurring in connection with services performed by Business respectively under this Agreement.

(b) By entering into this Agreement, except as specifically set forth herein, the Parties do not waive, and shall not be deemed to have waived, any rights, immunities, or defenses either may have, including the defense of parties, and nothing contained herein shall ever be construed as a waiver of sovereign or official immunity by the SEDC with such rights being expressly reserved to the fullest extent authorized by law and to the same extent which existed prior to the execution hereof.

(c) No employee of the SEDC, or any board member, or agent of the SEDC, shall be personally responsible for any liability arising under or growing out of this Agreement.

6. Notice. Any notice required or permitted to be delivered hereunder shall be deemed delivered by actual delivery, or on the first business day after depositing the same in the hands of a reputable overnight courier (such as United States Postal Service, FedEx or UPS) or transmitted and addressed to the Party at the address set forth below:

If intended for SEDC:

Seabrook Economic Development Corporation
Attn: Paul Chavez, Director
1700 First Street
Seabrook, Texas 77586

With a copy to:

City of Seabrook
Attn: Gayle Cook, City Manager
1700 First Street
Seabrook, Texas 77586

If to the Business:

TP Nails
Attn:
1706 MAIN STREET
SEABROOK, TEXAS 77586
vanhien60@yahoo.com
Email

Any Party may designate a different address at any time upon written notice to the other Parties.

7. Governmental Records. All invoices, records and other documents required for submission to the City pursuant to the terms of this Agreement are Governmental Records for the purposes of Texas Penal Code Section 37.10.

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(a) Governing Law. The Agreement shall be governed by the laws of the State of Texas, and the venue for any action concerning this Agreement (subject to the dispute resolution mechanisms of Article VII above) shall be exclusively in the Courts of Harris County. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

(b) Amendment. This Agreement may be amended by mutual written agreement of the Parties, as approved by the Board of Directors of the SEDC and paid for by the Business.

8. Legal Construction. In the event any one or more of the provisions contained in this Agreement shall, for any reason, be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions of this Agreement, 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 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.

Each of the Parties has been represented by counsel of their choosing in the negotiation and preparation of this Agreement. Regardless of which Party prepared the initial draft of this Agreement, this Agreement shall, in the event of any dispute, whatever its meaning or application, be interpreted fairly and reasonably and neither more strongly for or against any Party.

9. Entire Agreement. This Agreement constitutes 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, except SEDC Board approved amendments to this Agreement.

10. Paragraph Headings. The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the various and several paragraphs.

11. 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.

12. 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.

13. Indemnification.

BUSINESS AGREES TO DEFEND, INDEMNIFY AND HOLD THE SEDC AND THE CITY OF SEABROOK ("CITY"), AND THEIR RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS FROM AND AGAINST ANY AND ALL

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REASONABLE LIABILITIES, DAMAGES, CLAIMS, LAWSUITS, JUDGMENTS, ATTORNEY FEES, COSTS, EXPENSES AND ANY CAUSE OF ACTION THAT DIRECTLY RELATES TO ANY OF THE FOLLOWING: ANY CLAIMS OR DEMANDS BY THE STATE OF TEXAS THAT THE SEDC HAS BEEN ERRONEOUSLY OR OVER-PAID SALES AND USE TAX FOR ANY PERIOD DURING THE TERM OF THIS AGREEMENT AS A RESULT OF THE FAILURE OF BUSINESS TO MAINTAIN A PLACE OF BUSINESS AT THE PROPERTY OR IN THE CITY OF SEABROOK, OR AS A RESULT OF ANY ACT OR OMISSION OR BREACH OR NON-PERFORMANCE BY BUSINESS UNDER THIS AGREEMENT EXCEPT THAT THE INDEMNITY PROVIDED HEREIN SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE ACTION OR OMISSIONS OF THE SEDC OR CITY. THE PROVISIONS OF THIS SECTION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY, IT BEING THE INTENTION OF THE PARTIES THAT BUSINESS SHALL BE RESPONSIBLE FOR THE REPAYMENT OF ANY FUNDS PAID AND PROPERTY GRANTED TO BUSINESS HEREIN THAT INCLUDES CITY SALES TAX RECEIPTS THAT THE STATE OF TEXAS HAS DETERMINED WAS ERRONEOUSLY PAID, DISTRIBUTED OR ALLOCATED TO THE SEDC.

14. Additional Instruments. The Parties agree and covenant to cooperate, negotiate in good faith, and to execute such other and further instruments and documents as may be reasonably required to fulfill the public purposes provided for and included within this Agreement.

15. Force Majeure. Whenever a period of time is herein prescribed for action to be taken by the Business, the Business shall not be liable or responsible for, and there shall be excluded from the computation of any such period of time, any delays due to causes of any kind whatsoever which are caused by Force Majeure.

[EXECUTION PAGE FOLLOWS]

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BUSINESS

Executed on this 4th day of June, 2020.

Business: TP Nails
Signed: _____
By: Hien Huynh
Title: Business Owner

Executed on this ____ day of 6/4/2020, 2020.

SEABROOK ECONOMIC DEVELOPMENT CORPORATION

By: Paul Chavez
Name: Paul Chavez
Title: Executive Director

APPROVED

CITY OF SEABROOK, TEXAS

_____

BY: Thomas G. Kolupski
Mayor

DATE: _____, 2020

ATTEST:

_____

Robin Lenio, TRMC
City Secretary