

STATE OF TEXAS §
§ **ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT**
COUNTY OF WILLIAMSON §

This Economic Development Incentive Agreement (“Agreement”) is made by and between the Georgetown Economic Development Corporation, a Type A sales tax corporation (“GEDCO”), and 4871 Williams Drive, LLC, a Texas limited liability company (“Company”) (GEDCO and Company, each a “Party” and collectively the “Parties”), acting by and through their respective authorized representatives.

WITNESSETH:

WHEREAS, Company owns Lot 2-A Chapriel Place located at 4877 Williams Drive Georgetown, Texas 78637 and Lot 3-A Chapriel Place located at 4871 Williams Drive Georgetown, Texas 78637 (hereinafter collectively referred to as the “Property”), and intends to construct one or more buildings on the Property containing approximately 89,500 square feet of commercial building space in the aggregate for various facilities, primarily targeting tech and medical research, small tech manufacturers, laboratories, and professionals (hereinafter defined as the “Improvements”); and

WHEREAS, Company intends to make a Capital Investment (hereinafter defined) of approximately Five Million Two Hundred Fifty Thousand Dollars (\$5,250,000.00) in the design and construction of the Improvements and the Infrastructure (hereinafter defined); and

WHEREAS, Company has advised GEDCO that a contributing factor that would induce Company to construct the Improvements would be an agreement by GEDCO to provide an economic development grant to Company to offset the costs for Infrastructure; and

WHEREAS, GEDCO has adopted programs for promoting economic development; and

WHEREAS, the Development Corporation Act, Chapter 501-505 of the Texas Local Government Code (the “Act”) authorizes the GEDCO to provide economic development grants for the creation and retention of primary jobs that are required for the development of manufacturing and industrial facilities and for infrastructure suitable for new or expanded industrial business enterprises; and

WHEREAS, GEDCO has determined that the Grant (hereinafter defined) to be made hereunder is required or suitable to promote corporate relocation or develop new or expanded business enterprises and constitutes a “project”, as that term is defined in the Act; and

WHEREAS, GEDCO has determined that making an economic development grant to the Company in accordance with this Agreement will further the objectives of the GEDCO, will benefit the City and the City’s inhabitants and will promote local economic development and stimulate business and commercial activity in the City.

NOW THEREFORE, in consideration of the foregoing, and other consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Article I Definitions

Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

“Bankruptcy or Insolvency” shall mean the dissolution or termination of Company’s existence, insolvency, employment of receiver for any part of Company’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 proceedings under any bankruptcy or insolvency laws by or against Company and such proceedings are not dismissed within ninety (90) days after the filing thereof.

“Capital Investment” shall mean the Company’s total capitalized cost for the acquisition of the Property, and for the design and construction of the Improvements and for the Infrastructure.

“City” shall mean City of Georgetown, Texas.

“Commencement of Construction” shall mean that: (i) the plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for construction of the Improvements or the Infrastructure, as the case may be; (ii) all necessary permits for the construction of the Improvements, or the Infrastructure, as the case may be, pursuant to the respective plans therefore have been issued by all the applicable governmental authorities; and (iii) clearing and/or grading of the Land and the construction of the vertical elements of the Improvements has commenced, or in the case of the Infrastructure, clearing and/or grading of the Land has commenced.

“Company” shall mean 4871 Williams Drive, LLC, a Texas limited liability company.

“Completion of Construction” shall mean that: (i) the construction of the Improvements and/ or the Infrastructure, as the case may be, has been substantially completed; and (ii) in the case of the Improvements the building final for the Improvements has been issued by the City and in the case of the Infrastructure, the City has been accepted or approved the respective Infrastructure.

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

“Expiration Date” shall mean the date the Parties have satisfied their respective obligations herein.

“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 terrorist act, or threat thereof, riot, civil commotion, insurrection, government action or inaction (unless caused by the

intentionally wrongful acts or omissions of the Party), fires, earthquake, volcanic eruption, impact of meteor or extraterrestrial body, tidal or wave event such as a tsunami, meteorological event including but not limited to tornado, hurricane, explosions, floods, strikes, slowdowns or work stoppages, plague or other epidemiological event.

“GEDCO” shall mean the Georgetown Economic Development Corporation.

“Grant” shall mean an economic development grant in an amount equal to the actual costs paid and incurred by the Company for Infrastructure, not to exceed Two Hundred Fifty Thousand Dollars (\$250,000.00), to be paid as set forth herein.

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

“Improvements” shall mean one or more buildings containing approximately 89,500 square feet of commercial building space in the aggregate for various facilities, primarily targeting tech and medical research, small tech manufacturers, laboratories, and professionals to be constructed on the Land, together with other ancillary facilities such as required parking and landscaping more fully described in the submittals filed with City, from time to time, in order to obtain a building permit(s).

“Infrastructure” shall have the same meaning as provided by Texas Local Government Code, Section 501.103, and shall be for the Infrastructure necessary for the Improvements.

“Payment Request” shall mean a written request from Company to GEDCO for payment of the Grant accompanied by the applicable copies of invoices, bills, receipts and such other information, as may reasonably be requested by the GEDCO evidencing the costs incurred and paid by the Company for Infrastructure and for the required Capital Investment.

“Related Agreement” shall mean any agreement (other than this Agreement) by and between the City and/or GEDCO, and the Company.

“Required Use” shall mean the continuous use and operation of the Improvements for commercial purposes.

Article II

Term

The term of this Agreement shall begin on the Effective Date and continue until the Expiration Date, unless sooner terminated as provided herein.

Article III Economic Development Grant

3.1 Grant. (a) Subject to the obligation of Company to repay the Grant pursuant to Section 5.2 herein, and the continued satisfaction of all the terms and conditions of this Agreement by Company, GEDCO agrees to provide the Grant to Company within thirty (30) days after GEDCO receipt of a Payment Request following Completion of Construction of the Improvements.

(b) Notwithstanding Section 3.1 (a) Company may submit a Payment Request for a partial payment of the Grant in the amount of One Hundred Twenty-Five Thousand Dollars (\$125,000.00) within thirty (30) days after receipt by GEDCO of a Payment Request from Company after Company has caused Completion of Construction of one or more buildings comprising the Improvements containing at least 57,500 square feet of space provided Company has completed the same no later than December 31, 2021. The remainder of the Grant in the amount of One Hundred Twenty-Five Thousand Dollars (\$125,000.00) shall be paid by GEDCO to Company within thirty (30) days after receipt by GEDCO of a Payment Request from Company after Company has caused Completion of Construction of one or more buildings comprising the Improvements containing at least 32,000 additional square feet of space provided Company has completed the same no later than December 31, 2023.

(c) Failure to timely submit a Payment Request for the Grant shall result in the forfeiture of the payment of the Grant.

3.2 Current Revenue. The Grant made hereunder shall be paid solely from lawful available funds, which have been appropriated by GEDCO. Under no circumstances shall the obligations of GEDCO hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Consequently, notwithstanding any other provision of this Agreement, GEDCO shall have no obligation or liability to pay the Grant except as allowed by law.

3.3 Grant Limitations. GEDCO shall not be obligated to pay any commercial bank, lender or similar institution for any loan or credit agreement made by Company. None of the obligations of GEDCO under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution.

Article IV Conditions to Economic Development Grant

The obligation of GEDCO to pay the Grant to Company shall be conditioned upon the compliance and satisfaction by Company of the terms and conditions of this Agreement and each of the conditions set forth in this Article.

4.1 Good Standing. As a condition of the payment of the Grant, Company shall not have an uncured breach or default of this Agreement or a Related Agreement.

4.2 Payment Request. Company shall, as a condition precedent to the payment of the Grant, timely provide City with the applicable Payment Request.

4.3 Construction. Company shall, subject to events of Force Majeure, cause Commencement of Construction of the Improvements and the Infrastructure to occur on or before December 31, 2020; and Company shall, subject to events of Force Majeure, cause Completion of Construction of the Improvements and the Infrastructure to occur on or before December 31, 2023.

4.4 Required Use. During the term of this Agreement, following the date of Completion of Construction of the Improvements and continuing thereafter for a period of at least five (5) years thereafter until the Improvements shall not be used for any purpose other than the Required Use, and the operation and occupancy of the Improvements in conformance with the Required Use shall not cease for more than thirty (30) days, except in connection with and to the extent of an event of Force Majeure.

4.5 Capital Investment. The Capital Investment shall be at least Five Million Two Hundred Fifty Thousand Dollars (\$5,250,000.00) as of the date of Completion of Construction of the Improvements. Company shall within thirty (30) days after the date of Completion of Construction of the Improvements provide City with copies of receipts and other records evidencing the required Capital Investment and such other records as the GEDCO may reasonably request.

Article V Termination

- 5.1 This Agreement shall terminate upon any one of the following:
- (a) by written agreement of the Parties;
 - (b) Expiration Date;
 - (c) upon written notice by either Party in the event the other Party breaches any of the terms or conditions of this Agreement or a Related Agreement and such breach is not cured within sixty (60) days after written notice thereof;
 - (d) upon written notice by GEDCO, if Company suffers an event of Bankruptcy or Insolvency;
 - (e) upon written notice by GEDCO, if any Impositions owed to City or the State of Texas by Company shall become delinquent after sixty (60) days written notice is delivered pursuant to this Agreement (provided, however Company retains the right to timely and properly protest and contest any such Impositions); and
 - (f) 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 In the event the Agreement is terminated by GEDCO pursuant to Section 5.1(c), (d), (e), or (f), Company shall immediately repay to GEDCO an amount equal to the Grant

previously paid by GEDCO to Company as of the date of termination, plus interest at the rate periodically announced by the Wall Street Journal as the prime or base commercial lending rate, or if the Wall Street Journal shall ever cease to exist or cease to announce a prime or base lending rate, then at the annual rate of interest from time to time announced by Citibank, N.A. (or by any other New York money center bank selected by GEDCO) as its prime or base commercial lending rate, which shall accrue from the date of the Grant payment until paid.

5.3 Offsets. GEDCO may, at its option, offset any amounts due and payable under this Agreement against any debt (including taxes) lawfully due to GEDCO and/or City from Company, regardless of whether the amount due arises pursuant to the terms of this Agreement, a Related Agreement or otherwise, and regardless of whether the debt due GEDCO and/or City has been reduced to judgment by a court.

Article VI Miscellaneous

6.1 Binding Agreement; Assignment. This Agreement shall be binding upon and inure to the benefit of the heirs, successors, affiliates, administrators, executors, and permitted assigns of the respective Parties. This Agreement may not be assigned without the prior written consent of GEDCO.

6.2 Limitation on Liability. It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the Parties. It is understood and agreed between the Parties that Company, in satisfying the conditions of this Agreement, has acted independently, and GEDCO assumes no responsibilities or liabilities to third parties in connection with these actions. Company agrees to indemnify and hold harmless GEDCO from all such claims, suits, and causes of actions, liabilities and expenses, including reasonable attorney's fees, of any nature whatsoever arising out of the Company's performance of the conditions under this Agreement.

6.3 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.

6.4 Notice. Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the Party at the address set forth below or on the day received as sent by courier or otherwise hand delivered.

If intended for GEDCO, to

Attn: President
Georgetown Economic Development
Corporation
113 E. Eighth Street
Georgetown, Texas 78626
512.930.3546 - telephone

Attn: City Manager
Georgetown Economic Development
Corporation
113 E. Eighth Street
Georgetown, Texas 78626
512.930.3546 - telephone

If intended for Company, to:

Attn: Tom Chessher
4871 Williams Drive, LLC
151 Mercer Street Suite D
Dripping Springs, Texas 78620

With a copy to:

Charlie McNabb
City Attorney
City of Georgetown
510 W. 9th Street
Georgetown, Texas 78626

With a copy to:

K. "Andy" Tiwari, Esq.
Tiwari + Bell, PLLC
12002 Bandera Rd., Ste 102
Helotes, Texas 78023
210.417.4167 – telephone
210.787.3842 – facsimile

6.5 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, except as provided in any Exhibits attached hereto.

6.6 Governing Law. This Agreement shall be governed by the laws of the State of Texas, and venue for any action concerning this Agreement shall be in the State District Court of Williamson County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said Court.

6.7 Amendment. This Agreement may be amended by the mutual written agreement of the Parties.

6.8 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 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.

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

6.10 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.

6.11 Exhibits. Any exhibits to this Agreement are incorporated herein by reference for the purposes wherever reference is made to the same.

6.12 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.

6.13 Employment of Undocumented Workers. During the term of this Agreement Company agrees not to knowingly employ any undocumented workers and, if convicted of a violation under 8 U.S.C. Section 1324a (f), Company shall repay the amount of the Grant and any other funds received by Company from the GEDCO as of the date of such violation within 120 days after the date Company is notified by the GEDCO of such violation, plus interest at the rate of 4% compounded annually from the date of violation until paid. Company is not liable for a violation of this section by a subsidiary, affiliate, or franchisee of Company or by a person with whom Company contracts.

[Signature Page to Follow]

EXECUTED on this _____ day of _____, 2019.

**GEORGETOWN ECONOMIC
DEVELOPMENT CORPORATION**

By: _____
Kevin Kelley, President

EXECUTED on this _____ day of _____, 2019.

**4871 WILLIAMS DRIVE, LLC,
a Texas limited liability company**

By: **Chessher Financial Group, LLC,
a Texas limited liability company,
Its Manager**

By: _____
Tom Chessher, Manager

-AND-

By: **Canyon Creek Homes, L.P.
a Texas limited partnership
Its Manager**

By: **Canyon Creek Homes Management, LLC
a Texas limited liability company,
Its General Partner**

By: _____
Matt Hand, Managing Member

CERTIFICATION OF CITY COUNCIL APPROVAL

I hereby certify that the foregoing Economic Development Incentive Agreement of the Georgetown Economic Development Corporation and the Project described therein was approved by the City Council of the City of Georgetown, Texas, on the ____ day of _____, 2019.

THE CITY OF GEORGETOWN, TEXAS
A Texas home-rule municipality

By: _____
Dale Ross, Mayor

By: _____
Robyn Densmore, City Secretary

APPROVED AS TO FORM:

By: _____
Charlie McNabb, City Attorney