

BOOST BIZ EXTERIOR STOREFRONTS GRANT AGREEMENT

This Grant Agreement ("Agreement") is entered into as of this 14th day of March, 2022 ("Effective Date"), by and between THE CITY OF SAN JOSE, a charter city ("City"), and Holy Cannoli Inc, a California Corporation ("Tenant").

RECITALS

A. On September 1, 2019, Company leased a 2,644 square foot premises located at 138 E Santa Clara St in San Jose, California, currently used as a café ("Premises").

B. In connection with the occupation of the Premises, the City is assisting Company by providing a Grant to support economic development and neighborhood revitalization to occupy and operate Company on the Premises.

C. The Premises is used by Company to provide food and beverage service. The City desires to offer this grant to further the goals of the City's economic development strategy. The City desires to preserve and expand the number of jobs and tax revenues provided by the facilities operated by Company, and recognizes the need to further activate the exterior of the Premises to accomplish these ends. In order to assist the Company to improve the Premises, which will bring jobs and revenue to the City, the City is providing the financial assistance in this Agreement to be paid as a one-time Grant.

D. Subject to the terms and conditions set forth in this Agreement, the City wishes to award this Grant, provided that if Company vacates the Premises or ceases operation of the Company at the Premises within certain time periods as set forth herein, Company shall reimburse the City as more particularly described herein.

NOW, THEREFORE, the City, and Company hereby agree as follows:

1. City Financial Assistance. City hereby awards Company a Grant of Ten Thousand Dollars (\$10,000) subject to the terms and conditions of this Agreement.

2. City Financial Assistance. After the Company has executed a lease for the Premises, Company may request the Grant. Company acknowledges and agrees that the City's offer to pay the Grant under this Agreement is conditioned upon City approval of a certificate of occupancy allowing the operation of the Company at the Premises. The City's obligation to provide this Grant shall expire on December 31, 2022.

4. Failure to Occupy the Premises. The City has agreed to provide the City Assistance hereunder as an incentive to attract and retain Company in San Jose. If

Company vacates or otherwise no longer occupies any portion of the Premises at the applicable times stated below in this Section 4 (collectively, "Reimbursement Event"), Company shall, within thirty (30) days thereafter, repay the Grant to City, as follows

(a) If a Reimbursement Event occurs before the first anniversary of the date the City has issued all necessary approvals for Company to occupy the Premises ("City Approval Date"), Company shall reimburse the City ninety percent (90%) of any Grant made to Company under this Agreement;

(b) If a Reimbursement Event occurs on or after the first anniversary of the City Approval Date, but before the second anniversary of the City Approval Date, Company shall reimburse the City sixty seven percent (67%) of any Grant made to Company under this Agreement;

(c) If a Reimbursement Event occurs on or after the second anniversary of the City Approval Date, but before the third anniversary of the City Approval Date, Company shall reimburse the City thirty-three percent (33%) of any Grant made to Company under this Agreement;

(d) If Company remains in occupancy of the Premises on or beyond the third anniversary of the City Approval Date, Company shall not be required to reimburse the City for any portion of the Grant made to Company under this Agreement.

5. Term and Termination. The Term of this Agreement is three (3) years from the City Approval Date; provided, however, that in the event that Company fails to comply with any term or condition of this Agreement, City may terminate the Agreement with seven (7) days written notice to Company. Company's obligation to repay any Grant amounts on account of a Reimbursement Event as provided in Section 4 above shall continue beyond the Term.

6. Amendments. This Agreement may be amended, changed or modified only by a written amendment signed by the City and Company.

7. Entire Agreement. This Agreement contains the entire agreement between the parties relating to the subject matter of this Agreement. Any oral representations or modifications concerning the subject matter of this Agreement shall be of no force and effect.

8. Non-Discrimination. Company covenants and agrees for itself, its successors, its assigns, and all persons claiming under or through them that there shall be no discrimination against or segregation of any person or group of persons on account of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Premises, nor shall Company itself or any person claiming under or through it, establish or permit any such practice or practices of

discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the Premises.

9. Waiver. Any waiver by the City of any term, condition or requirement of this Agreement shall not constitute a waiver of any other term, condition or requirement hereof or constitute a waiver of the same term, condition or requirement in any other instance.

10. Notices. Any notice or demand which shall be required or permitted by law or any provisions of this Agreement shall be in writing, and shall be deemed effective when personally delivered or deposited in the United States mail, certified, return receipt requested, postage prepaid, addressed as follows:

To: City of San Jose
Attention: Director of Economic Development
200 East Santa Clara Street, 17th Floor Tower
San Jose, CA 95113

To: Jamie Whitmire
Holy Cannoli
138 E Santa Clara St
San Jose, CA 95113

or to such other address as any party may designate by notice in accordance with this Section.

Notice shall be deemed given on the date of personal delivery by hand, or the date of mailing, or on the date delivery is refused, if applicable.

11. Time. Time is of the essence in this Agreement.

12. Indemnification and Hold Harmless. Company shall indemnify, defend and hold the City, its officers and employees harmless from all suits, actions, claims, causes of action, costs, demands, judgments or liens arising out of this Agreement as a result of any acts or omissions of Company or its contractors, subcontractors, or persons claiming under any of the aforesaid, except to the extent of the active negligence, willful misconduct, or breach of this Agreement by the City or any of such other indemnified parties.

13. Assignment. This Agreement is not assignable by Company.

14. Severability of Provisions. If any provisions of this Agreement are held invalid, the remainder of this Agreement shall not be affected hereby, if such remainder would then continue to conform to the terms and requirements of applicable law.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

"CITY"

**FORM APPROVED BY THE
OFFICE OF THE CITY ATTORNEY**

CITY OF SAN JOSE, a charter city

Sarah Zarate

Email: sarah.zarate@sanjoseca.gov

" COMPANY"

(TENANT NAME), (TYPE OF ORGANIZATION)

Jamie Whitmire

Email: holycannolijamie@gmail.com