



CITY OF PERRIS

CITY COUNCIL

AGENDA SUBMITTAL

MEETING DATE: September 10, 2019

SUBJECT: Consideration of a Location Agreement between the City of Perris and Innovative Brand Partners, LLC a Delaware Corporation "Forever 21"

REQUESTED ACTION: **Approve** a Location Agreement between the City of Perris and Innovative Brand Partners, LLC; and **Authorize** the City Manager or his designee to execute the Location Agreement and all related actions and documents.

CONTACT: Clara Miramontes, Assistant City Manager *Cer*

BACKGROUND/DISCUSSION:

The Location Agreement will result in Forever 21, now known as Innovative Brand Partners, LLC, locating its e-commerce retail sales operations to the City of Perris, thereby creating jobs and generating additional sales tax revenues for the City. Forever 21 will be relocating its distribution and e-commerce facility into a 669,000 square-foot industrial building at 233 West Markham Street and has entered into a long-term lease. The approval of this agreement would allow for Forever 21 to move its sales business portion into Perris, thereby generating sales tax revenue that would not otherwise be collected if it were to operate as a distribution facility only. The facility in Perris will operate as a fulfillment center with point of sales coming from this location.

On July 12, 2018, the City received the attached letter of intent from Ernest & Young, LLP, representing Forever 21 requesting that the City of Perris consider entering into a local sales tax revenue sharing agreement in order to locate their e-commerce sales business portion into the City of Perris. The company is one of the fastest growing and largest growing fashion retailers in the world known for offering current fashion trends at a great value to customers. Forever 21 operates more than 815 stores in 57 countries, as well as a large e-commerce operation. It is a one of the largest family-owned, privately-held companies in Los Angeles, which is headquartered in Downtown Los Angeles. It anticipates spending \$30-\$34 million in capital expenditures to customize the build-out of the new facility.

This report includes all required information in accordance with Government Code Section 53083. Under the Location Agreement for a 20-year term or the end of the lease, whichever comes first, the City of Perris will share 50% of all sales tax revenues generated through its e-commerce retail sales which will be fulfilled through the Forever 21 fulfillment distribution center in Perris. Once the facility is fully operational, it is expected to employ up to 1,000 employees and it is projected to generate up to \$1.4 million in sales tax per year in which the City's sales tax revenue share is projected to be \$692,000 per year. This economic subsidy agreement will allow for the City to collect sales tax revenue

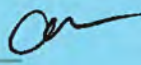
that would not otherwise be collected if it were to operate as a distribution facility. This revenue source will go towards the City's General Fund for needed public services throughout the City, such as parks and community programs.

The company has also agreed to an "*Employment Outreach for Local Residents*" provision to foster employment opportunities for Perris residents. The company shall use commercial reasonable efforts to recruit and hire local residents for full and part time employment opportunities and shall furnish the City of Perris Human Resources Development and/or Development Services Department with the location, dates and times for such recruitment activities prior to the date of accepting applications or such employee recruitment efforts commence.

BUDGET (or FISCAL) IMPACT: None.

Prepared by: Clara Miramontes, Assistant City Manager

REVIEWED BY:

City Attorney _____
Assistant City Manager _____ 
Finance Director _____

Consent:

Public Hearing: September 10, 2019

Business Item:

Presentation:

Other:

Attachment: Letter of Intent from Ernest & Young LLP, on behalf of Innovative Brand
Partners, LLC "Forever 21"
Location Tax Incentives Agreement



**Building a better
working world**

Ernst & Young LLP
725 S. Figueroa Street
Los Angeles, CA 90017

Tel: 1 213 977 3200
ey.com

July 12, 2019

Clara Miramontes
Assistant City Manager
City of Perris
135 North "D" Street
Perris, CA 92570-1998

Dear Clara,

Ernst & Young LLP has been engaged by our client, Forever 21 Inc. ("the Company" or "F21"), to assist the Company in discussions with the City of Perris, California regarding a potential local sales tax revenue sharing agreement.

The Company is one of the fastest and largest growing fashion retailers in the world known for offering current fashion trends at a great value to customers. F21 operates more than 815 stores in 57 countries, as well as a large e-commerce operation. F21 is one of the largest family-owned, privately-held companies in Los Angeles. F21 is headquartered in Downtown Los Angeles.

F21 has recently decided to relocate a new distribution and e-commerce fulfillment center to the City of Perris. F21 anticipates spending approximately \$30-\$35 million in capital expenditures to customize the build-out of the new facility and expects to employ up to 1,000 employees once the facility is fully operational. The Company plans to maintain a long-term lease in the City of Perris and make a positive economic and fiscal impact in the community.

The receipt of a sales tax incentive agreement with the City of Perris would alleviate significant immediate and long term operational costs that could be re-invested in the Company. Thank you for consideration of our request. We look forward to partnering with the City of Perris. Please do not hesitate to contact me at your convenience if you have any questions.

Sincerely,

Michael A. Cutri
Managing Director
EY LLP

CC: Brian Yun, Forever 21, Inc.
Richard Belmudez, City Manager – City of Perris

LOCATION AGREEMENT

between

CITY OF PERRIS

a Municipal Corporation

and

Innovative Brand Partners, LLC a Delaware Corporation

September 10, 2019

ARTICLE I PARTIES AND EFFECTIVE DATE.

1.1 Parties. This Location Agreement ("Agreement") is entered into by and between the City of Perris, a municipal corporation ("City"), and Innovative Brand Partners, LLC, a Delaware corporation, for and on behalf of itself, and certain of its subsidiaries and affiliates (collectively, the "Owner"). City and Owner are sometimes referred to individually as a "Party" and collectively as "Parties" herein.

1.2 Effective Date. This Agreement is dated for reference purposes only. This Agreement will not become effective until the date ("Effective Date") on which both of the following are true: (i) this Agreement has been approved by the City Council following all legally required notices and hearings; and (ii) this Agreement has been executed by the appropriate authorities of City and Owner.

ARTICLE II RECITALS.

2.1 City, in consideration of the additional Local Sales Tax Revenues (as defined in Section 3.1.18) to be collected and remitted by Owner for the benefit of City, which City would not otherwise realize, desires to provide City Payments to Owner as compensation for Owner establishing Operations within City through its Distribution Center and otherwise satisfying its obligations under this Agreement.

2.2 Such City Payment for each Fiscal Quarter will be an amount paid from any legally available source of funds and shall be measured by a percentage of the Local Sales Tax Revenues generated in such Fiscal Quarter, as more particularly set forth in this Agreement.

2.3 The operations of Owner in City will provide significant public benefits to City, in that the additional Local Sales Tax Revenues to be generated as a result of Owner's efforts represent a substantial and significant source of additional public revenue for City, which may be used by City for the funding of necessary public services and facilities, including public safety services and facilities.

2.4 City and Owner's desire to enter into this Agreement for the purposes described above.

ARTICLE III DEFINITIONS.

3.1 Definitions. Unless the context otherwise requires, the terms defined in this Article 3 shall, for all purposes, and of any amendment hereof, and of any opinion or report or other document mentioned herein or therein, have the meanings defined herein; the following definitions to be equally applicable to both the singular and plural forms of any of the terms defined herein.

3.1.1 "Agreement" shall have the meaning set forth in Section 1.1.

3.1.2 "Applicable Reporting Period" means, for purposes of determining the Parties' financial obligations hereunder, the Reporting Period applicable to the Fiscal

Quarter for which the financial obligation is being calculated. As an example, the Applicable Reporting Period for determining a financial obligation attributable to Sales occurring in the Fiscal Quarter ending September 30, shall include the then-current Fiscal Quarter ending September 30, and the three immediately prior Fiscal Quarters ending December 31, March 31, and June 30 respectively.

3.1.3 "Business Day" means a day which is not a Saturday, Sunday or legal holiday on which banking institutions in the State of California or City are closed.

3.1.4 "CDTFA" means the California Department of Tax and Fee Administration and any successor agency.

3.1.5 "City" shall have the meaning set forth in Section 1.1 and shall include any nominee, assignee or successor to City's rights, powers and responsibilities.

3.1.6 "City Payment" means, with respect to a particular Fiscal Quarter within the Term, the sum total amount of City's "Location Payment Obligation" (LPO), as defined in Section 3.1.15, for such Fiscal Quarter.

3.1.7 "Data and Documentation" shall have the meaning set forth in Section 4.2.2.

3.1.8 "Designated Sales Territory" means the geographical boundaries the sales, service and distribution area served by the Distribution Center which is located within the jurisdiction of the City. Except as otherwise provided in this Agreement, Owner shall have the right in its business discretion to adjust or modify the Designated Sales Territory to correspond to its business needs and requirements.

3.1.9 "Dispute Notice" shall have the meaning set forth in Section 6.15.

3.1.10 "Distribution Center" means any location operated by Owner within the City at which E-Commerce Retail Sales and other sales transactions are consummated pursuant to the Sales Tax Law. The "Initial Distribution Center" shall be located at 4323 Indian Avenue in the City.

3.1.11 "E-Commerce Retail Sales" means all sales of Material conducted electronically on the internet to any person or entity distributed through the Distribution Center, which is subject to the Sales Tax Law and which generates Local Sales Tax Revenues.

3.1.12 "Effective Date" shall have the meaning set forth in Section 1.2.

3.1.13 "Enforced Delays" shall have the meaning set forth in Section 6.12.

3.1.14 "Event of Default" shall have the meaning set forth in Section 4.6.

3.1.15 "Fiscal Quarter" means one three-month period within the Term and commencing on January 1, April 1, July 1, or October 1, and ending on, as applicable, the immediately following March 31, June 30, September 30, or December 31.

3.1.16 "Initial Distribution Center" shall have the meaning contained within "Distribution Center".

3.1.17 "Location Payment Obligation" or "LPO" means, as to a particular Fiscal Quarter during the Term, an amount equal to fifty percent (50%) of each dollar of Local Sales Tax Revenues received by City and attributable to Owner for each Fiscal Quarter.

3.1.18 "Local Sales Tax Revenues" means that portion of the Sales Tax, paid by Owner, which is allocated and paid to City pursuant to the Sales Tax Law. Local Sales Tax Revenues shall not include: (i) Penalty Assessments, (ii) any Sales Tax levied by, collected for or allocated to the State of California, the County of Riverside, or a district or any entity (including an allocation to a statewide or countywide pool) other than City, (iii) any administrative fee charged by the CDTFA, (iv) any Sales Tax subject to any sharing, rebate, offset or other charge imposed pursuant to any applicable provision of federal, state or local (except City's) law, rule or regulation, (v) any Sales Tax attributable to transactions other than E-Commerce Retail Sales, (vi) any Sales Tax attributable to any transaction not consummated within the Term, or (vii) any Sales Tax (or other funds measured by Sales Tax) required by the State of California to be paid over to another public entity (including the State) or set aside and/or pledged to a specific use other than for deposit into or payment from the City's general fund.

3.1.19 "Material" means any and all tangible personal property offered for sale by Owner to its customers/clients which is subject to the Sales Tax Law.

3.1.20 "Minor Amendment" means any limited technical correction, or not-substantive modification of this Agreement, as determined by the City Manager and City Attorney.

3.1.21 "Operations" means E-Commerce Retail Sales consummated through one or more Distribution Centers located in the City and operated by Owner.

3.1.22 "Penalty Assessments" means penalties, assessments, collection costs and other costs, fees or charges resulting from late or delinquent payment of Sales Tax and which are levied, assessed or otherwise collected from Owner.

3.1.23 "Prohibited Financial Assistance" shall have the meaning set forth in Section 4.1.

3.1.24 "Reporting Period" means, at any one point in time, the then-current Fiscal Quarter together with the immediately preceding three (3) Fiscal Quarters. As to any Fiscal Quarter, Owner's returns to the State of California under applicable Sales Tax Law are due by the end of the calendar month following a Fiscal Quarter, and accordingly, Owner's reporting for a Reporting Period shall be due to the City by the end of the calendar

month following the calendar month in which Owner is obligated to file. For example, for Fiscal Quarter ending September 30th, Owner's Data and Documentation shall be received by the City by November 30th.

3.1.25 "Resolution Period" shall have the meaning set forth in Section 6.15.

3.1.26 "Sale" and "Sales" mean, individually or collectively, E-Commerce Retail Sale(s).

3.1.27 "Sales Tax" means all sales and use taxes levied under the authority of the Sales Tax Law, excluding Sales Tax which is to be refunded to Owner, because of an overpayment of Sales Tax.

3.1.28 "Sales Tax Law" means (i) California Revenue and Taxation Code Section 6001 *et seq.*, and any successor law thereto, (ii) any legislation allowing City or other public agency with jurisdiction in City to levy any form of Sales Tax, and (iii) regulations of the CDTFA and other binding rulings and interpretations relating to (i) and (ii) hereof.

3.1.29 "Term" shall mean that period commencing on the Effective Date and ending on the earlier of (i) the date that is twenty (20) years after the Effective Date, or (ii) the date on which this Agreement is terminated pursuant to the specific provisions of this Agreement.

ARTICLE IV LOCATION AND OPERATION

4.1 Location and Operation Covenant. Owner hereby represents, warrants and covenants that it shall, on or before the commencement of the Term, establish its Operations through a Distribution Center within the jurisdictional boundaries of the City and shall thereafter, for the full Term, conduct any E-Commerce Retail Sales operations for the Designated Sales Territory through the Distribution Center in accordance with this Agreement, the Sales Tax Law, and all other applicable provisions of local, state and federal law. Owner shall use commercially reasonable, good faith efforts to market, promote and administer its E-Commerce Retail Sales activities, with the objective of maximizing the amount of Local Sales Tax Revenues within the Designated Sales Territory. Owner's Distribution Center(s) located in the City shall conduct its (or their) operations in accordance with all applicable provisions of local, state and federal law.

For purposes of this Section 4.1, the term "Prohibited Financial Assistance" shall mean any direct or indirect payment, subsidy, or other similar or dissimilar monetary or non-monetary benefit, including, without implied limitation, payment of land subsidies, relocation expenses, financial incentives, public financings, property or sales tax relief, relief from public improvement obligations, and payment for public improvements to or for the benefit of Owner to the extent such Prohibited Financial Assistance is given for the purpose of causing or would result in a relocation of the Distribution Center from the City, or an Event of Default by Owner hereunder, or a reduction or re-allocation of Local Sales Tax Revenues. Owner covenants and agrees for the Term, that without first obtaining the City's prior written approval, which may be given in City's sole and absolute discretion,

Owner will not directly or indirectly solicit, accept or enter into any agreement concerning any Prohibited Financial Assistance from any other public or private person or entity for itself or for any Distribution Center within a seventy-five (75) mile radius of the City.

Owner shall use commercially reasonable efforts to ensure that its Operations within the City conduct their business so that the place of sale for taxable sales occurring in the City during the Term will be the City, pursuant to the Sales Tax Law. In all sales reports filed by Owner with the CDTFA relating to taxable sales by such Operations, where such a designation is permitted or required under Sales Tax Law, Owner shall use commercially reasonable efforts to ensure that its Operations shall specify the City as the place of sale for all of its taxable sales that are conducted in the City.

4.2 Payment of City Payment. Within thirty (30) days following the later of: (i) City's receipt of final reconciliation reports from the CDTFA for a Fiscal Quarter occurring within the Term, and (ii) City's receipt of any and all Data and Documentation applicable to such Fiscal Quarter, City will determine and pay to Owner the City Payment due for such Fiscal Quarter.

4.2.1 Conditions Precedent to City Payments. City's obligations under Section 4.2 hereof are contingent on a year-to-year basis and, for each Fiscal Quarter within the Term, City's obligations to make any payments to Owner hereunder are expressly contingent upon the satisfaction of the following conditions precedent in each Fiscal Quarter after Owner has begun E-Commerce Retail Sales in City:

- (i) Owner having, for the entirety of such Fiscal Quarter, completely fulfilled its material obligations under this Agreement; and
- (ii) City's receipt and reasonable approval of the Data and Documentation, certified as complete and accurate by an authorized Owner officer or an authorized signatory delegate.

Should any one or more of the foregoing conditions precedent not be satisfied for each Fiscal Quarter, then City shall have no obligation to make any City Payment to Owner for such Fiscal Quarter until such conditions precedent are met. If the City elects to delay any payment on account of any such purported noncompliance by the Owner, the City must promptly give the Owner written notice pursuant to Section 6.8 of all such material obligations that the City alleges have not been fulfilled and cooperate with the Owner's efforts to effect a cure or remedy with respect thereto.

4.2.2 Data and Documentation. For the purposes of this Agreement, the term "Data and Documentation" means copies of Owner's quarterly reports to the CDTFA for the applicable Fiscal Quarter which sets forth the amount of Sales Taxes paid to the CDTFA during the Fiscal Quarter arising from Owners' Operations

4.2.3 Adequate Consideration. Each City Payment due and payable hereunder shall constitute the total payment to Owner for the Fiscal Quarter to which it

relates. The Parties hereto have determined and agreed that the City Payment due and payable during each Fiscal Quarter represents fair consideration to Owner for its covenants and obligations hereunder.

Both City and Owner expressly acknowledge and agree that Owner will receive no compensation under this Agreement other than the City Payment. Owner shall not be entitled to any reimbursement or other compensation from City for any costs incurred by Owner in performing or preparing to perform its obligations under this Agreement. The City Payments shall not be reduced or offset for any costs or expenses incurred by City in performing or preparing to perform its duties under this Agreement.

4.2.4 No Carry Forward or Back. City and Owner acknowledge and agree that the calculation and determination of all financial components of the Parties' rights and obligations under this Agreement shall be computed on a Fiscal Quarter-to-Fiscal Quarter basis. Revenues generated in one Fiscal Quarter may not be carried forward or back to any prior or future Fiscal Quarter, it being the express agreement and understanding of the Parties that for each Fiscal Quarter the financial obligations of the Parties and satisfaction of the conditions precedent to such obligations shall be determined and made independently of any other Fiscal Quarter.

4.2.5 Source of City Payment. City Payments shall be payable from any source of legally available funds of City. City covenants to reasonably consider such actions as may be necessary to include all City Payments owed hereunder in each of its annual budgets during the Term and to reasonably consider the necessary annual budgetary appropriations for all such City Payments.

4.2.6 Recapture of City Payments. If, at any time during or after the Term of this Agreement, CDTFA makes a final Board determination that all or any portion of the Local Sales Tax Revenues received by the City were improperly allocated and/or paid to the City, and if CDTFA requires repayment of, offsets against future Sales Tax payments, or otherwise recaptures from the City those improperly allocated and/or paid Local Sales Tax Revenues, then Owner shall, within thirty (30) days after written demand from the City, together with reasonable documentation, repay all City Payments (or applicable portions thereof) theretofore paid to Owner which are attributable to such repaid, offset or recaptured Local Sales Tax Revenues. If Owner fails to make such repayment within thirty (30) days after the City's written demand, together with reasonable documentation, then such obligation shall accrue interest from the date of the City's original written demand at the then-maximum legal rate imposed by the California Code of Civil Procedure on prejudgment monetary obligations, compounded monthly, until paid. In addition, to the extent unpaid, City may withhold such amounts from future City Payments. The city will promptly contact Owner regarding any communication from the CDTFA pertaining to tax allocations associated with the Owner's business.

City and Owner agree that, should the CDTFA question the correctness of the allocation or determine that there has been an improper allocation to the City, City will (at the request of Owner) engage legal counsel to use his or her best efforts to defend such allocation in all CDTFA administrative proceedings. Costs associated for such efforts will

be borne by both City and Owner in proportion to their respective percentage interests in Sales Tax revenue. For purposes of this paragraph, administrative proceedings include all CDTFA meetings, conferences and appeals before CDTFA Board members. Owner will cooperate fully with the City and its attorney. Owner shall have the right, but not the obligation, to participate in any such administrative proceedings and may engage its own legal counsel or consultant, at its own cost. In the event that the CDTFA reverses its decision (or is required to reverse its decision) and refunds or credits the City with some or all of the Sales Tax revenue previously found to have been misallocated to the City, the City shall refund all amounts previously repaid to the City pursuant to this Section with respect to such Sales Tax Revenue.

4.3 Audit of Books and Records. Either Party shall, upon no less than seventy-two (72) hours prior to written request from the other party, make its books and records relating to the calculation and determination of that Party's rights and obligations under this Agreement available at no cost to the requesting Party and/or its designees (including its accountants and/or attorneys) and shall direct its accountants and other consultants and contractors in possession of its books and records to do likewise; provided, however, that nothing herein shall be deemed to abridge or constitute a waiver of any Party's evidentiary rights and privileges arising pursuant to any provision of law, including, without implied limitation, the California Evidence Code, California Government Code (including the Public Records Act), the Code of Civil Procedure, federal statutes and state or federal judicial decisions. Furthermore, Owner may redact or omit confidential information, including but not limited to customer information such as addresses, names and phone numbers. Furthermore, all such non-privileged books and records may be made available and introduced as evidence if ordered by any court of competent jurisdiction. Each Party shall bear the costs of its own auditors, experts and other consultants it may engage to complete its investigation of the other Party's books and records; provided, however, that any audit and/or investigation ordered by the court, may be recovered as an item of litigation expense pursuant to Section 6.14.

4.4 Reconciliation. Each City Payment shall be accompanied by a statement setting forth the calculations made to determine the amount of such disbursement and setting forth all disbursements made to date. The City Payment may be subject to any credits or offsets necessary to account for adjustments to Local Sales Tax Revenues in accordance with section 3.1.18 or any other provision of this Agreement. Each Party shall have the right to contest any of the calculations or information contained in said statement or the determined amount of payment upon written notice to the other Party within sixty (60) calendar days of the date of the statement or City Payment. If the challenging Party can show to the reasonable satisfaction of the other Party, within sixty (60) calendar days of receiving such notice, that the amount of a City Payment was incorrect, either City shall disburse to Owner the correct amount due, or Owner shall reimburse City for any amount received in excess of the correct amount due.

4.5 Employment Outreach for Local Residents. A goal of the City in entering into this Agreement is to foster employment opportunities for Perris residents. To

that end, Owner shall use commercially reasonable efforts to recruit and hire local residents for full and part time employment opportunities at its Distribution Center, as determined by Owner in its sole discretion. To the extent Owner conducts any local on-site and/or off-site Job Recruitment Fairs, which are defined as Owner's pre-scheduled events open to the public with the purpose of filling 20 or more job positions at Owner's Distribution Center, Owner shall use commercially reasonable efforts to furnish the City of Perris Human Resources Development and/or Development Services Department with the location, dates and times for such Job Recruitment Fairs prior to the date of accepting applications. Job Recruitment Fairs exclude any recruitment activities or events hosted by Owner's staffing agencies or third party vendors which may be used to fill temporary job positions at Owner's Distribution Center. The City shall be authorized to post and advertise the job recruitment information provided to the City on the City's website and other jobs available and job recruitment sites within the region. Any offers of employment shall be at Owner's sole discretion. Nothing in this paragraph shall require Owner to offer employment to individuals who are not otherwise qualified for such employment. Without limiting the generality of the foregoing, the provisions of this Section 4.5 are not intended, and shall not be construed, to benefit or be enforceable by any person whatsoever other than City.

4.6 Event of Default. Each of the following shall constitute an "Event of Default":

4.6.1 Failure by a Party to comply with and observe any of the conditions, terms, or covenants set forth in this Agreement, if such failure remains uncured within thirty (30) days after written notice of such failure from the non-defaulting Party to the defaulting Party in the manner provided herein or, with respect to a default that cannot be cured within thirty (30) days, if the defaulting Party fails to commence such cure within such thirty (30) day period or thereafter fails to diligently and continuously proceed with such cure to completion. However, if a different period, notice requirement, or remedy is specified under any other section of this Agreement, then the specific provision shall control.

4.6.2 Any representation or warranty contained in this Agreement or in any application, financial statement invoice, certificate, or report submitted pursuant to this Agreement proves to have been incorrect in any material respect when made.

4.7 Rights and Remedies; Rights and Remedies Not Exclusive. Unless prohibited by law or otherwise provided by a specific term of this Agreement, the rights and remedies of City and Owner under this Agreement are nonexclusive and all remedies hereunder may be exercised individually or cumulatively. Upon the other Party's Event of Default, in addition to those remedies expressly granted herein, the Parties shall also have the right to seek all other available legal and equitable remedies.

4.8 Termination.

This Agreement shall terminate upon the occurrence of any of the following events:

4.8.1 In the event Owner's lease agreement for the Initial Distribution Center in the City expires or terminates, Owner may, at its option, terminate this Agreement upon written notice to the City;

4.8.2 Cessation of Owner's Operations within the City due to a Force Majeure event as defined in Section 4.9;

4.8.3 In addition to all other rights and remedies granted to the Parties under this Agreement or available to them in equity or at law, either Party may terminate this Agreement and all of its obligations hereunder without cost or liability upon the other Party's Event of Default. Such termination shall not limit or abridge the rights and remedies available to the non-defaulting Party.

4.9 Force Majeure. Neither Party to this Agreement will be liable for failure or delay in its performance of its obligations hereunder due to causes beyond its reasonable control, including, but not limited to fire, flood, war, riot, embargo, labor dispute, strike, earthquake, or other similar acts of God, acts of civil and military authorities, or terrorism.

ARTICLE V

5.1 City Representations and Warranties. City represents and warrants to Owner that, to City's actual current knowledge:

- (i) City is a municipal corporation exercising governmental functions and powers and organized and existing under the State of California;
- (ii) City has taken all actions required by law to approve the execution of this Agreement;
- (iii) City's entry into this Agreement and the performance of City's obligations under this Agreement do not violate any contract, agreement or other legal obligation of City;
- (iv) There are no pending lawsuits or other actions or proceedings which would prevent or impair the timely performance of City's obligations under this Agreement;
- (v) City has the legal right, power and authority to enter into this Agreement and to consummate the transactions contemplated hereby, and the execution, delivery and performance of this Agreement has been duly authorized and no other action by City is requisite to the valid and binding execution, delivery and performance of this Agreement, except as otherwise expressly set forth herein; and

- (vi) The individual executing this Agreement is authorized to execute this Agreement on behalf of City.

The representations and warranties set forth above are material consideration to Owner and City acknowledges that Owner is relying upon the representations set forth above in undertaking Owner's obligations set forth in this Agreement.

The term "City's actual current knowledge" means, and is limited to, the actual current knowledge of City Manager, as of the Effective Date, without having undertaken any independent inquiry or investigation for the purpose of making such representation or warranty and without any duty of inquiry or investigation. All of the terms, covenants and conditions of this Agreement shall be binding on and shall inure to the benefit of City and its nominees, successors and assigns.

5.2 Owner Representations and Warranties. Owner represents and warrants to City that, to Owner's actual current knowledge:

- (i) Owner is a duly formed Delaware corporation and is in good standing and qualified to do business under the laws of the State of California;
- (ii) The individual(s) executing this Agreement is/are authorized to execute this Agreement on behalf of Owner;
- (iii) Owner has taken all actions required by law to approve this Agreement;
- (iv) Owner's entry into this Agreement and the performance of Owner's obligations under this Agreement do not violate any contract, agreement or other legal obligation of Owner
- (v) There are no pending lawsuits or other actions or proceedings which would prevent or impair the timely performance of Owner's obligations under this Agreement; and
- (vi) Owner has the legal right, power and authority to enter into this Agreement and to consummate the transactions contemplated hereby, and the execution, delivery and performance of this Agreement have been duly authorized and no other action by Owner is requisite to the valid and binding execution, delivery and performance of this Agreement, except as otherwise expressly set forth herein.

The representations and warranties set forth herein are material considerations to City and Owner acknowledges that City is relying upon the representations set forth above in undertaking City's obligations set forth above.

The term "Owner's actual current knowledge" means, and is limited to, the actual current knowledge of Owner staff as of the Effective Date, without having undertaken any independent inquiry or investigation for the purpose of making such representation or warranty and without any duty of inquiry or investigation.

5.3 The City has entered into this Agreement with Owner because of the unique qualifications and identity of Owner. No voluntary or involuntary successor-in-interest of Owner shall acquire any rights or powers under this Agreement except as expressly set forth herein. Owner may not assign or transfer all or any part of this Agreement except as provided in Section 6.25.

ARTICLE VI MISCELLANEOUS

6.1 Amendment; Modification. At any time City and Owner may determine that this Agreement should be amended for the mutual benefit of the Parties, or for any other reason. Any such amendment to this Agreement shall only be by written agreement between City and Owner. City and Owner agree to consider reasonable requests for amendments to this Agreement which may be made by either of the Parties hereto, although neither Party shall be obligated to approve any such amendment. Any amendments to this Agreement must be in writing and signed by the appropriate authorities of both City and Owner. With the concurrence of the City Attorney, the City Manager is authorized on behalf of City to approve and execute Minor Amendments to this Agreement (as defined in Section 3.1.20) on behalf of City. Any amendment that is not a Minor Amendment shall require approval by the City Council. Any such approved amendment shall control over this Agreement.

6.2 California Law. This Agreement shall be construed and governed in accordance with the laws of the State of California without regard to its conflict of laws principles.

6.3 Execution in Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, and all of which shall constitute but one (1) and the same instrument.

6.4 Business Days. Any act or thing required to be done or exist on any date set forth herein which does not constitute a Business Day in any year shall be deemed to be done or to exist on such date if such act or thing is done or exists on the next date which constitutes a Business Day.

6.5 Tax Consequences. Owner shall be responsible and assume all liability for federal, state and/or local income or other taxes resulting from its receipt of City Payments.

6.6 Rights Not Granted. This Agreement is not, and shall not be construed to be, a statutory development agreement under California Government Code Section 65864 *et seq.* or a disposition and development agreement under California Health and Safety Code Section 33000 *et seq.* This Agreement is not, and shall not be construed to be, an approval of or an agreement to issue permits or a granting of any right or entitlement by City concerning any project, development, or construction by Owner in City. This

Agreement does not, and shall not be construed to exempt Owner in any way from the requirement to obtain permits and/or other discretionary or non-discretionary approvals as may be necessary for the development, maintenance and operation of any project, development or construction within City.

This Agreement does not, and shall not be construed to exempt Owner from the application and/or exercise of City's power of eminent domain or its police power, including, but not limited to, the regulation of land uses and the taking of any actions necessary to protect the health, safety and welfare of its citizenry.

6.7 Consent. Whenever consent or approval of either Party is required under this Agreement, that Party shall not unreasonably withhold, delay or condition such consent or approval unless a different standard is otherwise provided by a specific provision of this Agreement.

6.8 Notices and Demands. All notices or other communications required or permitted between City and Owner under this Agreement shall be in writing, and may be (i) personally delivered, (ii) sent by United States registered or certified mail, postage prepaid, return receipt requested, or (iii) sent by nationally recognized overnight courier service (e.g., Federal Express), and addressed to the Parties at the addresses below subject to the right of either Party to designate a different address for itself by notice similarly given. Any notice so given by registered or certified United States mail shall be deemed to have been received on the fourth (4th) Business Day after the same is deposited in the United States mail. Any notice not so given by registered or certified mail, such as notices delivered by courier service (e.g., Federal Express), shall be deemed received upon actual receipt of the same by the Party to whom the notice is given.

To City:

City of Perris
101 North "D" Street
Perris, CA 92570
Attn: City Manager

With a copy to:

Aleshire & Wynder, LLP
3880 Lemon Street, Suite 520
Riverside, CA 92501
Attn: Eric L. Dunn, City Attorney

To: Innovative Brand Partners, LLC
3880 N. Mission Road
Los Angeles, CA 90031
Attention: Tax Department

With a copy to: Forever 21, Inc.
3880 N. Mission Road

Los Angeles, CA 90031
Attention: Legal

6.9 Non-liability of Parties' Officials and Employees. No officer, elected official, contractor, consultant, attorney or employee of City shall be personally liable to Owner, any voluntary or involuntary successors or assignees of Owner, or any lender or other party holding an interest in Owner's property, in the event of any default or breach by City, or for any amount which may become due to Owner or to its successors or assignees, or on any obligations arising under this Agreement.

No officer, official, contractor, consultant, attorney or employee of Owner shall be personally liable to City, any voluntary or involuntary successors or assignees of City in the event of any default or breach by Owner, or for any amount which may become due to City or to its successors or assignees, or on any obligations arising under this Agreement.

6.10 Conflicts of Interest. No officer, elected official, contractor, consultant, attorney or employee of City shall have any personal interest, direct or indirect, in this Agreement nor shall any such officer, elected official, contractor, consultant, attorney or employee participate in any decision relating to this Agreement which unlawfully affects his/her personal interests or the interests of any corporation, partnership or association in which he/she is directly or indirectly interested.

6.11 Entire Agreement; Confidentiality. This Agreement contains all of the terms and conditions agreed upon by the Parties. No other understanding, oral or otherwise, in direct conflict with this Agreement shall be deemed to exist or to bind any of the Parties hereto. All prior written or oral offers, counteroffers, memoranda of understanding, proposals and the like are superseded by this Agreement. The terms and existence of this Agreement will not be publicized or made public beyond what is required by law. City shall keep any and all proprietary and confidential information and data provided by Owner under this Agreement strictly confidential to the extent permitted by law. City will use information provided by Owner pursuant to this Agreement only for the purposes within the scope of this Agreement. Owner shall clearly mark or otherwise identify in writing all information it considers to be proprietary and confidential at the time it is delivered to City. The confidentiality obligation under this section shall not apply to: (a) information which is already public information or which is otherwise available to the general public; (b) information received from a third party without a similar confidentiality restriction who is lawfully in possession of the information and who has the lawful right to disclose it; (c) information that is already in City's possession prior to receiving it from Owner; (d) information delivered by Owner to City and not marked or otherwise identified as proprietary and confidential at the time it was delivered; or (e) information required to be disclosed under the California Public Records Act..

6.12 Extensions and Delays. Time is of the essence in the performance of the obligations of City and Owner under this Agreement. In addition to specific provisions of this Agreement, providing for extensions of time, times for performance hereunder shall

be extended where delays in performance are due to war, insurrection; any form of labor dispute; lockouts; riots; floods; earthquakes; fires; acts of God or of third parties; third party litigation or orders and judgments of courts of competent jurisdiction; acts of a public enemy; acts of governmental authorities; epidemics; quarantine restrictions; freight embargoes; and other circumstances outside of a Party's reasonable control (collectively, "Enforced Delays") provided, however, that the Party claiming the extension shall notify the other Party of the nature of the matter causing the default; and, provided further, that the extension of time shall be only for the period of the Enforced Delays. In no event shall either Party be deemed in default of this Agreement because of an Enforced Delay event.

6.13 Indemnification; Offset. Owner agrees to indemnify City and hold it harmless from and against all third party demands, suits, proceedings, causes of action or claims arising from, in connection with or related to this Agreement or from City's performance of this Agreement, except to the extent such demand, suit, proceeding, cause of action or claim was caused by City's negligence or intentional misconduct, or the negligence or intentional misconduct of any of the City's officials, officers, employees, or agents, with the exception of CDTFA administrative proceedings described in Section 4.2. In the event that a court or administrative body determines that any portion of Local Sales Tax Revenues must be shared with another jurisdiction, such amount shall be deducted from Local Sales Tax Revenues and shall not be used to calculate the Location Payment Obligation. The City shall fully cooperate in the defense of such demand, suit, proceeding, cause of action or claim and upon written request of Owner shall provide to Owner such documents and records in possession of the City that are relevant to such demand, suit, proceeding or claim and not otherwise protected by law.

6.14 Attorneys' Fees. In the event of the bringing of an action or suit by a Party hereto against another Party hereunder by reason of any breach of any of the covenants or agreements or any intentional inaccuracies in any of the representations and warranties on the part of the other Party arising out of this Agreement or any other dispute between the Parties concerning this Agreement then, in that event, the prevailing Party in such action or dispute, whether by final judgment or arbitration award, shall be entitled to recover from the other Party all costs and expenses of suit or claim, including actual attorneys' fees and expert witness fees. Any judgment, order or award entered in any final judgment or award shall contain a specific provision providing for the recovery of all costs and expenses of suit or claim, including actual attorneys' fees and expert witness fees (collectively, "Costs") incurred in enforcing, perfecting and executing such judgment or award. For the purposes of this Section 6.14, Costs shall include, without implied limitation, attorneys' and experts' fees, costs and expenses incurred in the following: (i) post judgment motions and appeals, (ii) contempt proceedings, (iii) garnishment, levy and debtor and third party examination; (iv) discovery; and (v) bankruptcy litigation. This Section 6.14 shall survive any termination of this Agreement.

6.15 Informal Dispute Resolution. The Parties shall attempt in good faith to resolve any differences, controversy or claim arising out of or relating to this Agreement promptly by negotiations between senior officials of the Parties who have authority to settle the difference or controversy. The disputing Party may give the other Party written notice ("Dispute Notice") that a dispute exists between them. Within twenty (20) days after

receipt of a Dispute Notice, the receiving Party shall submit to the disputing Party a written response. The Dispute Notice and response shall include (a) a statement of each Party's position and a summary of the evidence and arguments supporting its position, and (b) the name and title of the official who shall represent that Party. The senior officials shall meet at a mutually acceptable time and place or by telephone conference within thirty (30) days of the date of the Dispute Notice, and thereafter as often as they reasonably deem necessary to exchange relevant information and to attempt to resolve the dispute, up to a maximum of ninety (90) days of the date of the Dispute Notice ("Resolution Period"). In the event any Party fails to provide a response to a Dispute Notice in accordance with this section or fails to cooperate in the scheduling of, or to attend, the meetings, described above, to resolve the dispute, then, with respect to that Party, the Resolution Period shall be deemed to have run so that the dispute may immediately be subject to legal action.

6.16 Jurisdiction and Venue. Any legal action or proceeding concerning this Agreement shall be filed and prosecuted in the appropriate State of California court in the County of Riverside, California. Both Parties hereto irrevocably consent to the personal jurisdiction of that court. City and Owner each hereby expressly waive the benefit of any provision of federal or state law or judicial decision providing for the filing, removal, or change of venue to any other court or jurisdiction, including, without implied limitation, federal district court, due to any diversity of citizenship between City and Owner, due to the fact that City is a party to such action or proceeding or due to the fact that a federal question or federal right is involved or alleged to be involved. Without limiting the generality of the foregoing, City and Owner specifically waive any rights provided to it pursuant to California Code of Civil Procedure Section 394. Owner acknowledges that the provisions of this Section 6.16 are material consideration to City for its entry into this Agreement, in that City will avoid the potential cost, expense and inconvenience of litigating in a distant forum.

6.17 Interpretation. City and Owner acknowledge that this Agreement is the product of mutual arms-length negotiation and drafting and that both Parties have been represented by legal counsel in the negotiation and drafting of this Agreement. Accordingly, the rule of construction which provides that ambiguities in a document shall be construed against the drafter of that document shall have no application to the interpretation and enforcement of this Agreement. In any action or proceeding to interpret or enforce this Agreement, the finder of fact may refer to any extrinsic evidence not in direct conflict with any specific provision of this Agreement to determine and give effect to the intention of the Parties with respect to any ambiguities in this Agreement.

6.18 No Waiver. Failure to insist on any occasion upon strict compliance with any of the terms, covenants or conditions hereof shall not be deemed a waiver by any Party of such term, covenant or condition, nor shall any waiver or relinquishment of any rights or powers hereunder at any one time or more times be deemed a waiver or relinquishment by any Party of such other right or power at any other time or times.

6.19 Successors and Assigns. The terms, covenants and conditions of this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their voluntary and involuntary successors and assigns.

6.20 No Third Party Beneficiaries. The performance of the respective obligations of City and Owner under this Agreement are not intended to benefit any party other than City or Owner. No person or entity not a signatory to this Agreement shall have any rights or causes of action against any Party to this Agreement as a result of that Party's performance or non-performance under this Agreement.

6.21 No Effect on Eminent Domain Authority. Nothing in this Agreement shall be deemed to limit, modify, or abridge or affect in any manner whatsoever City's eminent domain powers with respect to any property.

6.22 Warranty Against Payment of Consideration. Owner warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement. Third parties, for the purposes of this Section 6.22, shall not include persons to whom fees are paid for professional services if rendered by attorneys, financial consultants, accountants, engineers, architects and the like when such fees are considered necessary by Owner_.

6.23 Severability. City and Owner declare that the provisions of this Agreement are severable. If it is determined by a court of competent jurisdiction that any term, condition or provision hereof is void, voidable, or unenforceable for any reason whatsoever, then such term, condition or provision shall be severed from this Agreement and the remainder of the Agreement enforced in accordance with its terms.

6.24 Further Acts. City and Owner each agree to take such additional acts and execute such other documents as may be reasonable and necessary in the performance of their obligations hereunder. The foregoing shall not, however, be deemed to require City to exercise its legislative discretion in any particular fashion or to provide to Owner any remedy or claim for damages against City based on the lawful exercise of City's discretion.

6.25 No Assignment, Transfer, Pledge or Hypothecation. Owner may not assign, transfer, encumber or hypothecate its rights or obligations under this Agreement to any person or entity, without the express written consent of City, which may be withheld in City's sole and absolute discretion. Any unpermitted assignment, transfer, pledge, encumbrance, or hypothecation, or any attempt to do so, shall not confer any rights upon the purported assignee or transferee and shall constitute Owner's immediate and incurable material default of this Agreement, and City may, without providing Owner notice or opportunity to cure, exercise those remedies available to City pursuant to Sections 4.6 through 4.8. Notwithstanding the foregoing, Owner shall have the right to assign this Agreement or any right or obligation hereunder to its immediate or ultimate parent, or to an affiliate, by providing advance written notice to City. An "affiliate" shall mean any legal entity that, at the applicable time, directly or indirectly controls, is controlled with or by, or is under common control with, Owner.

6.26 Relationship of Parties. The Parties shall not be deemed in a relationship of partners or a joint venture by virtue of this Agreement, nor shall either Party be an agent, representative, trustee or fiduciary of the other. Neither Party shall have any authority to bind the other to any agreement.

6.27 Non-Dedication of Property. The execution of this Agreement by Owner does not result in the dedication of any Owner property for public use.

[Signatures on following pages]

SIGNATURE PAGE
TO
LOCATION AGREEMENT

CITY:

CITY OF PERRIS
a California Municipal Corporation

Dated: _____ By: _____
Richard Belmudez, City Manager

ATTEST:

By: _____
Nancy Salazar, City Clerk

APPROVED AS TO LEGAL FORM:

By: _____
Eric L. Dunn, City Attorney

SIGNATURE PAGE
TO
LOCATION AGREEMENT

INNOVATIVE BRAND PARTNERS,
LLC

Dated: _____ By: _____

By: _____

Its: _____