

**ECONOMIC DEVELOPMENT AND PERFORMANCE AGREEMENT BETWEEN
THE MANSFIELD ECONOMIC DEVELOPMENT CORPORATION AND
WISTERIA WAREHOUSE INVESTORS, L.L.C.**

This Economic Development Agreement (“Agreement”) is made and entered into by and between the MANSFIELD ECONOMIC DEVELOPMENT CORPORATION (the “Corporation”), a nonprofit corporation organized under Title 12, Subtitle C1, of the Texas Local Government Code, and WISTERIA WAREHOUSE INVESTORS, L.L.C. (“Wisteria Warehouse Investors”), a Texas limited liability company, for the purposes and considerations stated below:

RECITALS:

1. Wisteria Warehouse Investors is the current owner of a certain tract of land located at 625 S. Wisteria St. within the corporate limits of the City of Mansfield (“City”) (hereafter referred to as the “Property”).

2. Wisteria Warehouse Investors has requested a grant of funds from the Corporation for the purpose of upgrading the electric utility systems on the Property in order to accommodate a proposed manufacturing tenant that intends to lease from Wisteria Warehouse Investors approximately 15,455 square feet of space on the Property.

3. The Corporation has determined and found that requested grant will be used to fund a “project” as defined in Section 501.103 of the Texas Local Government Code, and that the expenditure of the Corporation is suitable or required for the development of a new or expanding business enterprise and will be limited to certain infrastructure improvements necessary to promote or develop such enterprise.

4. The Corporation, which has determined that substantial economic benefit and the creation of new opportunities of employment will accrue to the City as a result of Wisteria Warehouse Investors’s development and operation of the Property, desires to have Wisteria Warehouse Investors construct the Improvements on the Property. This project will increase the taxable value of the Property and will directly and indirectly result in the creation of additional jobs throughout the City. As a consequence, the value of the benefits of the Project (as defined herein) will substantially outweigh the amount of expenditures required of the Corporation under this Agreement.

5. The Corporation, to encourage the development and operation of the Property, desires to participate in the funding of the cost of the Improvements which are necessary in order for Wisteria Warehouse Investors to lease additional space to a new manufacturing business, which will aid and promote economic development in the City.

NOW THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Authorization.**

This Agreement is authorized by Title 12, Subtitle C1, Chapter 501 of the Texas Local Government Code.

2. **Definitions.** All terms not otherwise defined in this Agreement are defined below:

CAPITAL INVESTMENT means the expenditure by Wisteria Warehouse Investors of approximately \$423,853 to upgrade the electric utility system in the Facility and to provide for tenant finish out to accommodate the relocation of Harris Manufacturing to lease 15,455 square feet of space in the Facility.

FACILITY means the commercial building located on the Property that is owned by Wisteria Warehouse Investors.

IMPROVEMENTS mean the electric infrastructure improvements to be constructed/upgraded on the Property by Wisteria Warehouse Investors.

PROJECT means the reimbursement by the Corporation of up to \$57,072 toward the cost of the Improvements to accommodate the relocation of Harris Manufacturing to lease 15,455 square feet of space in the Facility.

3 **Term.**

This Agreement shall be effective as of the date of execution of all parties. This Agreement will continue to be in force and effective for a five year term commencing on the date that the Improvements are complete and approved by the City.

4. **Covenants of Wisteria Warehouse Investors.**

a. In consideration of Corporation agreeing to reimburse Wisteria Warehouse Investors monies in accordance with the terms and conditions of this Agreement, Wisteria Warehouse Investors agrees to:

- (1) Make a Capital Investment in the Property on or before December 31, 2015;
- (2) Complete the construction/upgrade of the Improvements on or before December 31, 2015; and
- (3) Render the Property to the Tarrant County Appraisal District and remain current on all property taxes for the term of this Agreement.

b. Should Wisteria Warehouse Investors fail to comply with any term of this Agreement, Wisteria Warehouse Investors shall have thirty (30) days after written notice from the Corporation to come into compliance. If the noncompliance is not cured within that period, or an agreement on a time frame to come into compliance is not reached with the Corporation, Wisteria Warehouse Investors will forfeit the right to reimbursement by the Corporation. In the event Wisteria Warehouse Investors's uncured noncompliance occurs after the grant of funds is received, Wisteria Warehouse Investors shall immediately upon demand repay the Corporation an amount equal to all payments made under Section 5 of this Agreement plus the greater of ten percent (10%) per annum or the maximum rate permitted by law from the date the payments were made until the date of full repayment.

c. Wisteria Warehouse Investors covenants and certifies that he does not and will not knowingly employ an undocumented worker as that term is defined by Section 2264.01(4) of the Texas Government Code. In accordance with Section 2265.052 of the Texas Government Code, if Wisteria Warehouse Investors is convicted of a violation under 8 U.S.C. Section 1324a (f), Wisteria Warehouse Investors shall repay to the Corporation the full amount of all payments made under Section 5 of this Agreement, plus ten percent (10%) per annum from the date such payment was made until the date of full repayment. Repayment shall be paid within one hundred twenty (120) days after the date Wisteria Warehouse Investors receives a notice of violation from the Corporation.

5. **Payments by Corporation.**

The Corporation shall participate with Wisteria Warehouse Investors in the cost of the Project not to exceed Fifty Seven Thousand and Seventy Two Dollars (\$57,072) to be reimbursed to Wisteria Warehouse Investors for the cost of the construction/upgrade of the Improvements upon satisfactory proof of the compliance with section 4, subsections (1) and (2) of this Agreement and the submission of satisfactory documentation evidencing the expenditures for the Improvements.

6. **Improvements.**

Wisteria Warehouse Investors shall be solely responsible for the design and construction of the Improvements and shall comply with all subdivision regulations, building codes and other ordinances of the City applicable to the Improvements.

7. **Indemnification.**

WISTERIA WAREHOUSE INVESTORS, IN PERFORMING THE OBLIGATIONS UNDER THIS AGREEMENT, IS ACTING INDEPENDENTLY, AND THE CORPORATION ASSUMES NO RESPONSIBILITIES OR LIABILITIES TO THIRD PARTIES IN CONNECTION WITH THE PROPERTY OR IMPROVEMENTS. WISTERIA WAREHOUSE INVESTORS AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CORPORATION, ITS OFFICERS, AGENTS, EMPLOYEES, AND VOLUNTEERS IN BOTH THEIR

PUBLIC AND PRIVATE CAPACITIES, FROM AND AGAINST CLAIMS, SUITS, DEMANDS, LOSSES, DAMAGES, CAUSES OF ACTION, AND LIABILITY OF EVERY KIND, INCLUDING, BUT NOT LIMITED TO, EXPENSES OF LITIGATION OR SETTLEMENT, COURT COSTS, AND ATTORNEYS FEES WHICH MAY ARISE DUE TO ANY DEATH OR INJURY TO A PERSON OR THE LOSS OF USE, OR DAMAGE TO PROPERTY, ARISING OUT OF OR OCCURRING AS A CONSEQUENCE OF THE PERFORMANCE BY WISTERIA WAREHOUSE INVESTORS OF THE OBLIGATIONS UNDER THIS AGREEMENT, INCLUDING ANY ERRORS OR OMISSIONS, OR NEGLIGENT ACT OR OMISSION OF WISTERIA WAREHOUSE INVESTORS, OR THE OFFICERS, AGENTS OR EMPLOYEES.

8. **Access to Information.**

Wisteria Warehouse Investors agrees to provide the Corporation access to information related to the construction of the Improvements and Project during regular business hours upon reasonable notice. The Corporation shall have the right to require Wisteria Warehouse Investors to submit any reasonably necessary information, documents, invoices, receipts or other records to verify costs of the Improvements and Capital Expenditures related to the Property.

9. **General Provisions.**

a. **Mutual Assistance.** Wisteria Warehouse Investors and the Corporation shall 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.

b. **Representations and Warranties.** Wisteria Warehouse Investors represents and warrants to the Corporation that it has the requisite authority to enter into this Agreement and that the person signing this Agreement on its behalf has been duly authorized to sign this Agreement by Wisteria Warehouse Investors. Wisteria Warehouse Investors further represents and warrants to the Corporation that it will not violate any federal, state or local laws in operating the business, that all proposed Improvements shall conform to the applicable building codes, zoning ordinances and all other ordinances and regulations.

c. **Section or Other Headings.** Section or other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

d. **Entire Agreement.** This Agreement and any exhibits attached hereto contains the entire agreement between the parties with respect to the transaction contemplated herein.

e. **Amendment.** This Agreement may only be amended, altered, or revoked by written instrument signed by Wisteria Warehouse Investors and the Corporation.

f. **Successors and Assigns.** This Agreement shall be binding on and insure to the benefit of the parties, their respective successors and assigns. Wisteria Warehouse Investors may assign all or part of its rights and obligations hereunder only upon prior written approval of the Corporation, which approval shall not be unreasonably withheld or delayed provided reasonable satisfactory guaranties are provided to insure compliance with all terms of this Agreement. Upon written approval by Corporation of such assumption, assignment or transfer, Wisteria Warehouse Investors shall thereafter be released from its obligations hereunder.

g. **Notice.** Any notice required or permitted to be delivered by this Agreement shall be deemed delivered by depositing same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses, or at such other addresses provided by the parties in writing:

Wisteria Warehouse Investors: Wisteria Warehouse Investors, L.L.C.
1703 N. Peyco Dr.
Arlington, Texas 76001

CORPORATION: Director
Mansfield Economic Development Corporation
301 South Main Street
Mansfield, Texas 76063

With a copy to: City Attorney
City of Mansfield
1200 East Broad Street
Mansfield, Texas 76063

h. **Interpretation.** Regardless of the actual drafter of this Agreement, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against any party.

i. **Applicable Law/Venue.** This Agreement is made, and shall be construed and interpreted under the laws of the State of Texas; venue for any legal action regarding this Agreement shall lie in Tarrant County, Texas.

j. **Severability.** In the event any provision of this Agreement is ruled illegal, invalid, or unenforceable by any court of proper jurisdiction, under present or future laws, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or 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.

k. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

l. **No Joint Venture.** Nothing contained in this Agreement is intended by the parties to create a partnership or joint venture between the parties.

m. **Default.** If a party should default (the "Defaulting Party") with respect to any of its obligations hereunder and should fail, within thirty (30) days after delivery of written notice of such default from the other party (the "Complaining Party") to cure such default, the Complaining Party, by action or proceeding at law or in equity, may be awarded its actual but not consequential damages and/or specific performance for such default.

n. **Covenant Running with the Land.** All rights, covenants, restrictions, burdens, privileges and charges, set forth in this Agreement shall exist at all times as long as this Agreement is in effect, among all parties having any right, title or interest in any portion of all of the Property.

o. **Force Majeure.** If either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder (other than the payment of money) by reason of strikes, lockouts, inability to procure materials, failure of power, governmental moratorium or other governmental action or inaction (including, failure, refusal or delay in issuing permits, approvals or authorizations), injunction or court order, terrorist attacks, riots, insurrection, war, fire, earthquake, flood or other natural disaster or other reason of a like nature not the fault of the party delaying in performing work or doing acts required under the terms of this Agreement (but excluding delays due to financial inability), then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay, provided that the foregoing shall not be applicable to any payment obligation of either party under this Agreement.

**MANSFIELD ECONOMIC
DEVELOPMENT CORPORATION**

By: _____
Larry Klos, Board President

Date: _____

ATTEST:

Board Secretary

APPROVED AS TO FORM AND LEGALITY:

Attorney for the Corporation

WISTERIA WAREHOUSE INVESTORS, LLC.

By: _____
James Maibach, Managing Member

Date: _____

ACKNOWLEDGEMENT

BEFORE ME, the undersigned authority, on this date personally appeared James Maibach, who after being duly sworn stated that he is a Managing Member of Wisteria Warehouse Investors, LLC, and that he signed the foregoing instrument on behalf of said entity for the purposes expressed therein.

Notary Public, in and for the State of Texas

My commission expires: _____

Date: _____