

**ECONOMIC DEVELOPMENT AND PERFORMANCE AGREEMENT BETWEEN THE  
MANSFIELD ECONOMIC DEVELOPMENT CORPORATION AND  
EL CAPA ASSOCIATES, A TEXAS LLP**

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 (the "Act"), and EL CAPA ASSOCIATES, A TEXAS LLP ("EL CAPA"), a Texas Limited Partnership, for the purposes and considerations stated below:

**RECITALS:**

1. EL CAPA owns property located at 201 Sentry Drive (hereafter referred to as the "Property"), within the corporate limits of the City of Mansfield ("City"), where EL CAPA plans to make certain improvements (the "Development").

2. EL CAPA intends to make a new Capital Investment in the Property of at least Four Hundred Fifty Thousand Dollars (\$300,000.00) to construct the Development.

3. The Corporation has determined and found that the requested grant will be used to fund a "project" as defined in Section 501.103 of the Act; specifically, that the expenditure of the Corporation is required for infrastructure necessary to promote new or expanded business enterprises.

4. The Corporation, which has determined that substantial economic benefit and the creation of new opportunities for employment will accrue to the City as a result of EL CAPA's capital investment in the Property, desires to have EL CAPA make the capital investment in the Property. This project will increase the taxable value of the Property and will directly result in the creation of jobs at the Development and will 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, develop a new business and to obtain the benefits stated in this Agreement, desires to participate in the funding of the cost of certain Infrastructure Improvements (hereinafter defined) which are necessary in order for EL CAPA to make the capital investment in the Property and to operate the Development as hereinafter set forth, 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 the Act.

2. **Definitions.**

**CAPITAL INVESTMENT** means the actual cost incurred related to the construction of the Development, including the actual construction costs of all building improvements, renovations, site preparation, structures, infrastructure, utilities, landscaping and onsite improvements, including labor and materials, engineering costs, surveying costs, fees of consultants, permit and inspection fees, and business personal property and equipment located on the Property after the date of this Agreement that are subject to ad valorem taxes. It does not include insurance costs, marketing costs or any interest paid to finance the cost of Capital Investment.

**CERTIFICATE OF OCCUPANCY** means the document issued by the City of Mansfield for the Development certifying the building's compliance with applicable building codes and other laws, and indicating it to be in a condition suitable for occupying.

**CITY** means the City of Mansfield, Texas.

**DEVELOPMENT** means the improvements made to an existing industrial development of approximately 25,000 square feet on an approximate 2.3 acre tract located at 201 Sentry;

**PRIMARY JOBS** means any employee on a forty (40) hour or more per week schedule or the combination of two (2) or more employees on part-time schedules equaling at least forty (40) hours **AND falling under the definition of primary jobs in Chapter 501 of the Texas Municipal Code.**

**IMPROVEMENT COSTS** means the Capital Investment by EL CAPA for the Development.

**INFRASTRUCTURE IMPROVEMENTS** means fire suppression systems, ADA compliance upgrades, concrete fire lanes, concrete parking, backflow prevention systems, and electrical disconnects.

**PAYMENTS** mean the payments made by the Corporation to EL CAPA under the terms and conditions of this Agreement.

**PROJECT** means the payment by the Corporation to EL CAPA of up to Sixty Thousand Dollars (\$60,000) for the actual Capital Investment expended for the Infrastructure Improvements according to the formula set forth in this Agreement.

**PROPERTY** has the meaning set forth in the Recitals.

EL CAPA has the meaning set forth in the Recitals.

**3. Term.**

This Agreement shall be effective as of the date of execution of all parties and will continue to be in force and effect for 5 years or until the final Payment is made, whichever occurs earlier, unless terminated earlier under the terms of this Agreement.

**4. Covenants of EL CAPA.**

a. In consideration of Corporation agreeing to pay EL CAPA monies in accordance with the terms and conditions of this Agreement, EL CAPA agrees to:

- (1) Make a total Capital Investment for the Development on or before December 31, 2017 in an amount of no less Three Hundred Thousand Dollars (\$300,000)
- (2) Obtain a Certificate of Occupancy for at least one building in the Development no later than December 31, 2017;
- (3) Enter into a minimum 3 year lease with a tenant who will provide PRIMARY JOBS as defined in Chapter 501 of the Texas Municipal Code
- (4) Cause to be created through leases of the DEVELOPMENT a minimum of ten (10) PRIMARY JOBS over the term of this Agreement and retain them for the term of this Agreement;
- (5) Render the Property and the Development to the Tarrant County Appraisal District and remain current on all ad valorem taxes for the term of this Agreement;
- (6) Provide documentation to the Corporation for the Capital Investment for the Development and the Infrastructure Improvements in a manner acceptable to the City; and
- (7) Operate the Development or cause it to be operated as a retail and restaurant business for the term of this Agreement.

b. Should EL CAPA fail to comply with any term of this Agreement, EL CAPA 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, EL CAPA will forfeit its right to reimbursement by the Corporation. In the event EL CAPA's uncured noncompliance occurs after a grant of funds is received, EL CAPA shall immediately

upon demand repay the Corporation a portion of the grant of funds received by EL CAPA under this Agreement plus ten percent (10%) interest per annum which shall accrue from the date of default until the date the debt is repaid in full.

c. EL CAPA covenants and certifies that it does not and will not knowingly employ an undocumented worker as that term is defined by Section 2264.001(4) of the Texas Government Code. In accordance with Section 2264.052 of the Texas Government Code, if EL CAPA is convicted of a violation under 8 U.S.C. Section 1324a (f), EL CAPA shall repay to the Corporation the full amount of all payments made under Section 5 of this Agreement, plus ten percent (10%) interest 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 EL CAPA receives a notice of violation from the Corporation.

## **5. Payments by Corporation.**

Provided EL CAPA is in compliance with each term of this Agreement, the Corporation shall participate in the cost, up to Sixty Thousand Dollars (\$60,000) of the Infrastructure Improvements as follows:

- (1) EL CAPA's right to a Payment shall commence upon the issuance by the City of a Certificate of Occupancy for the improvements.
- (2) The Payment will be made within thirty (30) days after submittal to the Corporation of a Certificate of Occupancy and documentation of the actual costs of the **FIRE SUPPRESSION SYSTEM.**
- (3) Payments shall cease when the total amount of the Payments equal Sixty Thousand Dollars (\$60,000) or on **December 31, 2019, whichever occurs first.**

## **6. Improvements.**

EL CAPA shall be solely responsible for the design of the Development and the Infrastructure Improvements shall comply with all building codes and other ordinances of the City applicable to the construction of the Development and Infrastructure Improvements. EL CAPA and the Corporation hereby agree that all buildings and Infrastructure Improvements constructed in the Development shall be covered by this Agreement and counted towards the total amount of Payments to EL CAPA, whether such Improvements are actually constructed by EL CAPA or its affiliate or by the initial owner or lessee of a particular building.

## **7. Indemnification.**

EL CAPA, 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. EL CAPA 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 EL CAPA OF THE OBLIGATIONS UNDER THIS AGREEMENT, INCLUDING ANY ERRORS OR OMISSIONS, OR NEGLIGENT ACT OR OMISSION OF EL CAPA, OR THE OFFICERS, AGENTS OR EMPLOYEES.

**8. Access to Information.**

EL CAPA agrees to provide the Corporation access to information related to the Project during regular business hours upon reasonable notice. The Corporation shall have the right to require EL CAPA to submit any reasonably necessary information, documents, invoices, receipts or other records to verify EL CAPA's compliance with this Agreement.

**9. General Provisions.**

a. **Mutual Assistance.** EL CAPA 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.** EL CAPA represents and warrants to the Corporation that it has the requisite authority to enter into this Agreement. EL CAPA represents and warrants to the Corporation that it will not violate any federal, state or local laws in operating the business, that all proposed Infrastructure 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 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 EL CAPA 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. EL CAPA may assign all or part of its rights and obligations hereunder only upon prior written approval of the Corporation.

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:

EL CAPA: EL CAPA ASSOCIATES, A TEXAS LLP  
1703 N PEYCO DRIVE  
ARLINGTON, TX

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

With a copy to: Betsy Elam  
Taylor, Olson, Adkins, Sralla & Elam, LLP  
6000 Western Place, Suite 200  
Fort Worth, Texas 76107

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 seek recovery of its actual (but not consequential or punitive damages) for such default and/or specific performance of such obligation.

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.

p. **Attorney's Fees.** In the event it should become necessary to take legal action to interpret or enforce the terms of this Agreement, the prevailing party in such action shall be entitled to recover from the non-prevailing party reasonable attorney's fees and costs of court.

[The remainder of this page is intentionally left blank.]  
[Signatures begin on the following page.]

**MANSFIELD ECONOMIC  
DEVELOPMENT CORPORATION**

By: \_\_\_\_\_  
Larry Klos, Board President

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Board Secretary

**EL CAPA**

By: EL CAPA

By: \_\_\_\_\_

Date: \_\_\_\_\_

**ACKNOWLEDGEMENT**

BEFORE ME, the undersigned authority, on this date personally appeared \_\_\_\_\_ who after being duly sworn stated that he is the **Manager of PEYCO, a General Partner of EL CAPA**, and that he signed the foregoing instrument on behalf of said entity in the capacity and for the purposes expressed therein.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

Date: \_\_\_\_\_