

**ECONOMIC DEVELOPMENT AND PERFORMANCE AGREEMENT BETWEEN THE
MANSFIELD ECONOMIC DEVELOPMENT CORPORATION AND
SOUTHERN CHAMPION TRAY, LP**

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 SOUTHERN CHAMPION TRAY, LP ("SCT"), a Tennessee Limited Partnership, for the purposes and considerations stated below:

RECITALS:

1. SCT operates on the property located at 949 S. 6th Avenue, Mansfield, Texas 76063, within the corporate limits of the City of Mansfield ("City") (hereafter referred to as the "Property"), where it currently operates an industrial manufacturing facility to design and produce custom folded cartons for packaging of consumer products (the "Facility"). The property is owned by the Zeiser family, who also owns SCT.

2. SCT intends to make a new Capital Investment in the Property of at least Fifteen Million Two Hundred Thousand Dollars (\$15,200,000.00) to renovate and expand the existing building and acquire major equipment for the Facility, which will result in the creation of additional Primary Jobs at the Property.

3. The Corporation has determined and found that the requested grant will be used to fund a "project" as defined in Section 501.101 of the Act; specifically, that the expenditure of the Corporation will be used for land, buildings and improvements that are for the creation of primary jobs and that are required or suitable for the development, retention or expansion of a manufacturing and industrial facility.

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 SCT's capital investment in the Property, desires to have SCT 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 Primary Jobs on the Property 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, to retain an existing business and to obtain the benefits stated in this Agreement, desires to participate in the funding of the cost of certain Improvements (hereinafter defined) which are necessary in order for SCT to make the capital investment in the Property and to operate the Facility 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 renovation and expansion of the Facility, including the actual construction costs of all buildings, 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 Facility 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.

FACILITY means the industrial manufacturing facility located on the Property that is used for designing and producing custom folded cartons for packaging of consumer products.

FTE 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 without regard to whether individuals in those positions are the same as those in previous counts.

IMPROVEMENT means renovations to the existing Facility, the addition of approximately 23,000 square feet to the Facility, and the acquisition of major equipment such as an expanded scrap collection system, Zerand Web Cutter, food tray machines, printing press and sheeter.

IMPROVEMENT COSTS means the Capital Investment by SCT for the Improvements.

INITIAL IMPROVEMENTS has the meaning set forth in Section 4(a)(1).

PAYMENT means the annual payment made by the Corporation to SCT under the terms and conditions of this Agreement.

PRIMARY JOBS means FTE's performing the type of jobs defined in Section 501.002 of the Texas Local Government Code.

PROJECT means the payment by the Corporation to SCT of Nine Hundred Ten Thousand Dollars (\$910,000.00) towards the total investment of Fifteen Million Two Hundred Thousand Dollars (\$15,200,000.00) toward the cost of the Improvements.

PROPERTY has the meaning set forth in the Recitals.

SCT 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 until December 31, 2021 or until the final Payment is made, unless terminated earlier under the terms of this Agreement.

4. Covenants of SCT.

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

- (1) Make a total new Capital Investment in the Facility for the Improvements on or before December 31, 2020 in an amount of no less than Fifteen Million Two Hundred Thousand Dollars (\$15,200,000.00) according to the following schedule:

| <u>No later than</u> | <u>New Capital Improvements</u> |
|----------------------|--|
| 12-31-2016 | \$ 9,590,000.00 (the "Initial Improvements") |
| 12-31-2017 | \$ 2,490,000.00 |
| 12-31-2018 | \$ 1,410,000.00 |
| 12-31-2019 | \$ 630,000.00 |
| 12-31-2020 | \$ 1,080,000.00 |

TOTAL: \$15,200,000.00

- (2) Obtain a Certificate of Occupancy for the Initial Improvements no later than December 31, 2016;
- (3) Create a minimum of sixty nine (69) FTE Primary Jobs by December 31, 2020 and retain them for the Term of this Agreement according to the following schedule:

| <u>No later than</u> | <u>Number of New FTE</u> |
|----------------------|--------------------------|
| 12-31-2016 | 23 |
| 12-31-2017 | 13 |
| 12-31-2018 | 15 |
| 12-31-2019 | 12 |
| 12-31-2020 | 6 |
| TOTAL: | 69 |

- (4) Render the Property and the Facility to the Tarrant County Appraisal District and remain current on all ad valorem taxes for the Term of this Agreement;
- (5) Provide documentation to the Corporation for the Capital Investment in a manner acceptable to the City; and
- (6) Operate the Facility as a manufacturing and distribution business for the term of this Agreement.

b. Should SCT fail to comply with any term of this Agreement, SCT 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, SCT will forfeit its right to reimbursement by the Corporation. In the event SCT's uncured noncompliance occurs after a grant of funds is received, SCT shall immediately upon demand repay the Corporation a portion of the grant of funds received by SCT under this Agreement. The amount that shall be repaid if there is uncured non-compliance shall be an amount that is pro-rated based on the remaining Term of this agreement.

c. SCT covenants and certifies that it 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 SCT is convicted of a violation under 8 U.S.C. Section 1324a (f), SCT 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 SCT receives a notice of violation from the Corporation.

5. Payments by Corporation.

Provided SCT is in compliance with each term of this Agreement, the Corporation shall make Payments not to exceed Nine Hundred Ten Thousand Dollars (\$910,000.00) to be paid annually to SCT with the first Payment of Two Hundred Sixty Thousand Dollars (\$260,000.00) to be made no later than December 31, 2016 and annual payments of One Hundred Thirty Thousand Dollars (\$130,000.00) to be made no later

than December 31st of each year thereafter, with the last Payment made no later than December 31, 2021.

6. Improvements.

SCT shall be solely responsible for the design of the Facility and shall comply with all building codes and other ordinances of the City applicable to the Renovation and expansion of the Facility.

7. Indemnification.

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

8. Access to Information.

SCT 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 SCT to submit any reasonably necessary information, documents, invoices, receipts or other records to verify SCT's compliance with this Agreement.

9. General Provisions.

a. **Mutual Assistance.** SCT 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.** SCT represents and warrants to the Corporation that it has the requisite authority to enter into this Agreement. SCT 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 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 SCT 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. SCT 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:

SCT: Southern Champion Tray, LP
220 Compress Street
Chattanooga, Tennessee 37405
Attn: Brian Hunt, VP Operations

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 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.

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.

**MANSFIELD ECONOMIC
DEVELOPMENT CORPORATION**

By: _____
Larry Klos, Board President

Date: _____

ATTEST:

Board Secretary

SOUTHERN CHAMPION TRAY, LP

By: _____

Brian Hunt, VP Operations

Date: _____

ACKNOWLEDGEMENT

BEFORE ME, the undersigned authority, on this date personally appeared _____, who after being duly sworn stated that he is the _____ of Southern Champion Tray, LP, and that he signed the foregoing instrument on behalf of said entity for the purposes expressed therein.

Notary Public

My commission expires: _____

Date: _____