

**ECONOMIC DEVELOPMENT AND PERFORMANCE AGREEMENT BETWEEN THE
MANSFIELD ECONOMIC DEVELOPMENT CORPORATION AND
BACKYARD COME AS YOU ARE, 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 Backyard Come As You Are, LP, a Texas limited partnership ("MR"), for the purposes and considerations stated below:

RECITALS:

1. MR owns or will own the property located at 109 S. Main Street, Mansfield, Texas 76063, within the corporate limits of the City of Mansfield ("City") (hereafter referred to as the "Property") as depicted on Exhibit "A", where it will construct or cause the construction of the Improvements.

2. MR intends to make a new Capital Investment in the Property of at least Two Million Seven Hundred and Ten Thousand Dollars (\$2,710,000.00) to construct the Improvements and related infrastructure.

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 will be used to pay for drainage infrastructure to serve the Improvements.

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 MR's capital investment in the Property, desires to have MR 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 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 encourage new business in the historic downtown area 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 MR to make the capital investment in the Property and to construct the Improvements 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 Improvements and related infrastructure, 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 Restaurants (whether one or more) 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.

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.

IMPROVEMENTS means the construction of the Restaurants on the Property as depicted on Exhibit "B".

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

MR has the meaning set forth in the Recitals.

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

PROJECT means the payment by the Corporation to MR of \$143,000.00 for drainage infrastructure to serve the Improvements as depicted on Exhibit "C".

PROPERTY has the meaning set forth in the Recitals.

RESTAURANTS means three restaurants located on the Property to include Twisted Root, Quincy's Chicken Shack and one other restaurant yet to be determined as of the Effective Date of this Agreement.

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 MR.

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

- (1) Make a total new Capital Investment for the Improvements and related infrastructure on or before September 1, 2017 in an amount of no less than Two Million Seven Hundred and Ten Thousand Dollars (\$2,710,000.00).
- (2) Commence construction of the Improvements and related infrastructure no later than ninety (90) days after approval of appropriate zoning by the City.
- (3) Obtain a Certificate of Occupancy for all three of the Restaurants no later than September 1, 2017 with the Restaurants open for business within twenty (20) days of that date;
- (4) Create approximately forty (40) FTE jobs by September 1, 2017 and retain them for the Term of this Agreement.
- (5) Render the Property and the Improvements to the Tarrant County Appraisal District and remain current on all ad valorem taxes for the Term of this Agreement;
- (6) Provide paid invoices, lien waivers from first-tier contractors and lower-tier contractors with contracts in excess of \$25,000.00, and an all bills paid affidavit from the general contractor to the Corporation for the Capital Investment in a manner reasonably acceptable to the City; and
- (7) Operate or cause to be operated the Restaurants for the term of this Agreement, or if any one or more restaurants close, use good faith efforts to re-lease the space to another restaurant or user within 180 days of closure. Should a Restaurant be closed for

more than 180 days without a new tenant acceptable to the Corporation, MR shall be in breach of this Agreement.

b. Should MR fail to comply with any term of this Agreement, MR 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, MR will forfeit its right to reimbursement by the Corporation. The City and MR agree that if MR is unable to deliver the Private Improvements to the operator of the Restaurants by January 1, 2017, the deadlines for obtaining a certificate of occupancy and opening of the Restaurants will be extended on a day-for-day basis without triggering a default or non-compliance event under this paragraph. In the event MR's uncured noncompliance occurs after a grant of funds is received, MR shall immediately upon demand repay the Corporation a portion of the grant of funds received by MR 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. MR 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 MR is convicted of a violation under 8 U.S.C. Section 1324a (f), MR 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 MR receives a notice of violation from the Corporation. The Corporation understands and acknowledges that MR is leasing the Property to the Restaurants, and MR does not control the hiring practices of the Restaurants.

5. Payments by Corporation.

Provided MR is in compliance with each term of this Agreement, the Corporation shall pay to MR an amount not to exceed \$143,000.00 for drainage infrastructure related to the Improvements as depicted on Exhibit "C", within thirty (30) days after receipt of evidence of the Capital Expenditure for the drainage Improvements.

6. Improvements.

MR shall be solely responsible for the design of the Improvements and shall comply with all building codes and other ordinances of the City applicable to the construction of the Improvements.

7. Indemnification.

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

8. Access to Information.

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

9. General Provisions.

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

f. **Successors and Assigns.** This Agreement shall be binding on and inure to the benefit of the parties, their respective successors and assigns. MR 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:

MR: Backyard Come As You Are, LP
100 N. Mitchell Rd.
Mansfield, Texas 76063
Attn: Kim McCaslin

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. **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.

o. **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

Backyard Come As You Are, LP
a Texas limited partnership

By: McCaslin Shlieker Investments, Inc.
Sole General Partner

By: _____
Name: _____
Title: _____

Date: _____

ACKNOWLEDGEMENT

BEFORE ME, the undersigned authority, on this date personally appeared Kim McCaslin, who after being duly sworn stated that she is the _____ of McCaslin Shlieker Investments, Inc., the sole general partner of Backyard Come As You Are, LP, a Texas limited partnership, and that she signed the foregoing instrument on behalf of said entity for the purposes expressed therein.

Notary Public

My commission expires: _____

Date: _____