

**ECONOMIC DEVELOPMENT AND PERFORMANCE AGREEMENT BETWEEN THE
MANSFIELD ECONOMIC DEVELOPMENT CORPORATION AND
LG BROAD CANNON, LLC**

This Economic Development Agreement (“**Agreement**”) is made and entered into by and between the MANSFIELD ECONOMIC DEVELOPMENT CORPORATION (“**Corporation**”), a nonprofit corporation organized under Title 12, Subtitle C1, of the Texas Local Government Code (“**Act**”), and LG BROAD CANNON, LLC, a Texas limited liability company (“**Company**”). Company and the Corporation may sometimes hereafter be referred to individually as a “party” or collectively as the “parties.”

RECITALS:

WHEREAS, Company intends to develop a neighborhood retail center on 19.33 acres of land located at the northwest corner of Broad Street and Cannon Drive in the City of Mansfield, Texas; and

WHEREAS, in conjunction with construction of the development, Company will be making necessary public roadway and utility improvements; and

WHEREAS, the Board of Directors of the Corporation finds and determines that certain public infrastructure will serve to facilitate, promote or develop new or expanded business enterprises and constitutes a “project”, as that term is defined in Section 501.103 of the Act, and the Corporation is willing to provide economic development funding limited to costs associated with the construction of such public infrastructure as provided herein; and

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:

**ARTICLE 1
DEFINITIONS**

“**Act**,” “**Agreement**,” “**Corporation**,” and “**Company**,” have the meanings set forth above.

“**Capital Investment**” means the actual costs attributable to the purchase of the Property and construction of the Development and related infrastructure, including the actual construction costs of all buildings, site preparation, structures, infrastructure, utilities, landscaping and on and offsite improvements, including labor and materials, architectural and engineering costs, surveying costs, legal costs, commissions, taxes, financing costs, title fees, fees of consultants, construction management fees, permit and inspection fees.

“**Certificate of Occupancy**” means the document issued by the City of Mansfield certifying a 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 a retail shopping center located on the Property comprised of approximately 130,000 square feet of retail and restaurant space as depicted on the attached Exhibit A.

“Director” means the Corporation’s Economic Development Director.

“Effective Date” means the date this Agreement is fully executed by both the Corporation and Company.

“Expiration Date” shall mean the date of full payment of the Grants, unless sooner terminated as provided herein.

“Grants” means the payments to be made by the Corporation to Company pursuant to this Agreement as a reimbursement for the cost of the Improvements and upon the terms, conditions and provisions set forth herein, such payments to a sum calculated as follows: the lesser of: (i) 100% of the actual costs of the Improvements, or (ii) \$355,000. It is anticipated that the Grants will be paid in multiple payments as described in Article 4. Each individual payment shall mean a “Grant.”

“Impositions” mean all taxes, assessments, use and occupancy taxes, charges, excises, license and permit fees, and other charges by public or governmental authority, general and special, ordinary and extraordinary, foreseen and unforeseen, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on Company or any property or any business owned by Company within the City of Mansfield.

“Improvements” means replacement of approximately 600 feet of storm sewer lines, and a median break and left turn lane on Broad Street as identified on the attached Exhibit A.

“Payment Request” means a written request from Company to Corporation for payment of a Grant. For the first Grant payment, the written request must be accompanied by (i) a Certificate of Occupancy for the space in the Development being presented for reimbursement; (ii) an executed lease for the space with a Tenant; (iii) documentation of actual construction costs of the Improvements; and (iv) documentation of the expenditure of the Capital Investment, in a manner and form acceptable to the Corporation. For every Grant payment request made after the first Grant has been paid, the written request must be accompanied by (i) a Certificate of Occupancy for each space; and (ii) an executed lease for the space.

“Property” means 19.33 acres of land located at the northwest corner of Broad Street and Cannon Drive in the City of Mansfield, Texas, as shown on the attached Exhibit A.

“Tenant” means one or more tenants which will lease space within the Development.

“Term” means the term of this Agreement as described in Article 2 of this Agreement.

ARTICLE 2

TERM

The Term of this Agreement will begin on the Effective Date and continue thereafter until the Expiration Date, unless terminated earlier under the terms of this Agreement.

ARTICLE 3

COVENANTS OF COMPANY

3.01 Company Obligations. In consideration of Corporation agreeing to pay Company the Grants in accordance with the terms and conditions of this Agreement, Company, agrees to:

- (a) Make the Capital Investment of no less than \$38,500,000; and
- (b) Make the Improvements.

3.02 Undocumented Workers. Company 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 Company is convicted of a violation under 8 U.S.C. Section 1324a (f), Company 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 Company receives a notice of violation from the Corporation.

ARTICLE 4

GRANT BY CORPORATION

4.01 Grants. Provided Company is in compliance with each term of this Agreement, the Corporation shall pay the Grants as follows:

- (a) Company's right to a Grant shall commence upon the City's issuance of a Certificate of Occupancy for the first retail or restaurant space leased within the Development. The first Certificate of Occupancy must be issued no later than June 30, 2018.
- (b) Each Grant will be calculated by multiplying the amount of square footage of Tenant leased space (as stated in the underlying lease) by \$2.73. By way of example, if Company leases a 10,000 square foot retail space to a Tenant, the Grant will equal \$27,300.
- (c) Each Grant will be made within thirty (30) days after submittal to the Corporation of a Payment Request.
- (d) Company will not be entitled to any further payments once it has received full payment of the Grants (lesser of actual costs of construction of the Improvements or \$355,000).

- (e) Company will not be eligible to receive any Grant for lease space within the Development which receives a Certificate of Occupancy after December 31, 2019.

ARTICLE 5 IMPROVEMENTS

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

ARTICLE 6 TERMINATION, OFFSET, AND REPAYMENT

6.01 Termination. This Agreement may be terminated upon any one or more of the following:

- (a) by mutual written agreement of the parties;
- (b) upon written notice by either party, if the other party defaults or breaches any of the terms or conditions of this Agreement and such default or breach is not cured within thirty (30) days after written notice thereof;
- (c) upon written notice by Corporation, if Company suffers an event of bankruptcy;
- (d) upon written notice by Corporation, if any Impositions owed to City by Company become delinquent and such delinquency has not been cured within thirty (30) days after written notice thereof (provided, however, Company retains the right to timely and properly protest and contest any such taxes or Impositions in accordance with applicable law);
- (e) upon written notice by Corporation, if a Tenant has not received a Certificate of Occupancy for any space within the Development by June 30, 2018;
- (f) upon written notice by Corporation, if (i) Company has not yet received all of the Grants; (ii) there is remaining leasable space within the Development; and (iii) such remaining leasable space has not received a Certificate of Occupancy as of December 31, 2019; or
- (g) upon written notice by either party if any subsequent federal or state legislation or any decision of a court of competent jurisdiction renders this Agreement invalid, illegal, or unenforceable.

6.02 Offset. Corporation may at its option, and after delivering written notice to Company of its intent to do so, offset any amounts due and payable under this Agreement against any delinquent debt (including taxes) lawfully due to City of Mansfield by Company, regardless of whether the amount due arises pursuant to the terms of this Agreement, or otherwise, and regardless of whether

or not the debt due to the City of Mansfield has been reduced to judgment by a court. Such offset right shall not apply to any sum timely and properly protested and contested in accordance with applicable law.

6.03 Repayment. In the event the Agreement is terminated by Corporation pursuant to Section 6.01(b)-(d), Company shall immediately refund to Corporation an amount equal to the amount of the Grants that has been provided by Corporation to Company prior to the date of such termination, plus interest at the rate of interest periodically announced by the Wall Street Journal as the prime or base commercial lending rate, or if the Wall Street Journal shall ever cease to exist or cease to announce a prime or base lending rate, then at the annual rate of interest from time to time announced by Citibank, N.A. (or by any other New York money center bank selected by Corporation) as its prime or base commercial lending rate, from the Effective Date until paid.

ARTICLE 7 INDEMNIFICATION

COMPANY, 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 IMPROVEMENTS OR THE DEVELOPMENT. COMPANY AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CORPORATION, ITS DIRECTORS, OFFICERS, AGENTS, EMPLOYEES, AND VOLUNTEERS IN BOTH THEIR OFFICIAL AND INDIVIDUAL 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 COMPANY OF THE OBLIGATIONS UNDER THIS AGREEMENT, INCLUDING ANY ERRORS OR OMISSIONS, OR NEGLIGENT ACT OR OMISSION OF COMPANY, OR ITS OFFICERS, AGENTS, EMPLOYEES, OR CONTRACTORS.

ARTICLE 8 ACCESS TO INFORMATION

Upon the Corporation's request, Company agrees to provide the Corporation access to contract documents, invoices, receipts and reports related to the Development to verify Company's compliance with this Agreement.

ARTICLE 9 GENERAL PROVISIONS

9.01 Mutual Assistance. Company 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.

9.02 Representations and Warranties. Company represents and warrants to the Corporation that it has the requisite authority to enter into this Agreement. Company 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 and the Development shall conform to the applicable building codes, zoning ordinances and all other ordinances and regulations.

9.03 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.

9.04 Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the transaction contemplated herein.

9.05 Amendment. This Agreement may only be amended, altered, or revoked by written instrument signed by Company and the Corporation.

9.06 Successors and Assigns.

(a) Assignment. This Agreement shall be binding on and insure to the benefit of the parties, their respective successors and assigns. Company may assign all or part of its rights and obligations hereunder only upon prior written approval of the Corporation.

(b) Collateral Assignment. Notwithstanding Section 9.06(a), Company shall have the right to collaterally assign, pledge, or encumber, in whole or in part, to any lender as security for any loan in connection with construction of the Improvements, all rights, title, and interests of Company to receive the Grant under this Agreement. Such collateral assignments: (i) shall require the prior written consent of the Corporation, which shall not be unreasonably delayed or withheld, and Corporation agrees to execute such reasonable consent forms as may be required to evidence such consent; (ii) shall require notice to the Corporation together with full contact information for such lenders, (iii) shall not create any liability for any lender under this Agreement by reason of such collateral assignment unless the lender agrees, in writing, to be bound by this Agreement; and (iv) may give lenders the right, but not the obligation, to cure any failure of Company to perform under this Agreement. No collateral assignment may relieve Company from any obligations or liabilities under this Agreement. The Director has the authority to give the written consent under this subsection after review and consultation with the Corporation's legal counsel; provided, however, the Director may, in his or her sole discretion, present the assignment request to the Corporation's board of directors for approval.

9.07 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:

COMPANY: LG BROAD CANNON, LLC
3500 Maple Ave, Suite 1600
Dallas, Texas 75219
ATTN: Matt Bloomfield

With a copy to: Leon Capital Group, LLC
3500 Maple Ave., Suite 1600
Dallas, Texas 75219
Attn: Legal Department

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

With a copy to: Mansfield Economic Development Corporation Attorney
Taylor, Olson, Adkins, Sralla & Elam, LLP
6000 Western Place, Suite 200
Fort Worth, Texas 76107

9.08 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.

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

9.10 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.

9.11 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.

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

9.13 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.

9.14 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.

9.15 Limitation of Liability. The parties further agree that neither party will be liable to the other under this Agreement for consequential damages (including lost profits) or exemplary damages.

**MANSFIELD ECONOMIC
DEVELOPMENT CORPORATION**

By: _____
Larry Klos, Board President

Date: _____

ATTEST:

Board Secretary

LG BROAD CANNON, LLC
a Texas limited liability company

By: _____

Name: _____

Title: _____

Date: _____

