

SECOND AMENDED AND RESTATED
ECONOMIC DEVELOPMENT AND PERFORMANCE AGREEMENT
BETWEEN THE MANSFIELD ECONOMIC DEVELOPMENT
CORPORATION AND ZAH GROUP, INC.

This Second Amended and Restated Economic Development Agreement ("Agreement") is made and entered into by and between Zah Group, Inc. ("Zah Group"), a Delaware corporation, by and through its President, Secretary, and Treasurer Tom Klein and the Mansfield Economic Development Corporation (the "Corporation" or the "MEDC") a Type A corporation organized under the Development Corporation Act of 1979, codified in Section 501, et seq. of the Texas Local Government Code (the "Act"), for the purposes and considerations stated below:

RECITALS:

1. The Zah Group owns and controls Klein Tools, a hand tool manufacturing company, with worldwide presence.

2. The Zah Group is exploring the possibility of locating various Klein Tool operations in the City of Mansfield, and could purchase or construct a manufacturing and distributing space in the City of Mansfield by December 31, 2021, potentially creating and maintaining at least 585 jobs by that date.

3. The Corporation has determined and found that the Project and Improvements, as defined herein, will create jobs as defined by the Act, and that the expenditures of the Corporation set forth in this Agreement are suitable or required for the development of a new industrial enterprise, and fall within the definition of a "project" as defined in Section 501.101 of the Act.

4. The Corporation, which has determined that substantial economic benefit and the creation of new opportunities of employment will accrue to City as a result of Zah Group's development and operation of the Improvements (as hereinafter described), desires to have Zah Group construct the Improvements and operate an industrial manufacturing and distribution center in Mansfield. This development will increase the taxable value in the City and will directly and indirectly result in the creation of additional jobs throughout the City and the value of the benefits of the Project is anticipated to outweigh the amount of expenditures required of the Corporation under this Agreement.

5. The Corporation, to encourage the development of the Real Property and operation of the Facility, desires to participate in the funding of the cost to construct certain infrastructure to the Property which is necessary in order for Zah Group to potentially locate various industrial facilities in Mansfield and operate as hereinafter set forth, to aid and promote economic development in the City.

6. On November 15, 2010, the Economic Development Performance Agreement Between The Mansfield Economic Development Corporation and Zah Group, Inc. ("Original Agreement") was executed. As a result of variables outside of Zah Group's

control, the parties agreed to amend and restate the Original Agreement, and subsequently entered into an Amended and Restated Economic Development and Performance Agreement Between the Mansfield Economic Development Corporation and Zah Group, Inc on December 5, 2013 (“Amended Agreement”).

7. Again, as a result of variables outside of Zah Group’s control, the parties desire to further amend the Amended Agreement, and this Agreement is intended to amend, restate and replace the Amended Agreement in its entirety.

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 Development Corporation Act of 1979.

2. **Definitions.**

CAPITAL INVESTMENT means and shall include all costs incurred relating to the improvement of the facilities located in Mansfield, including the actual construction costs and other costs of all buildings, structures, infrastructure, utilities, landscaping and other onsite and offsite improvements, including all labor and materials, engineering costs, surveying costs, fees of consultants, designers and other professionals, landscape design, platting fees, permit fees, geotechnical investigation, construction material testing, and inspection fees and purchase of Equipment. It does not include any cost reimbursed by the City, acquisition costs of land, insurance costs, marketing costs, or any interest paid to finance the purchase of the Capital Investment.

CITY means the City of Mansfield, Texas.

DESIGN SERVICES means the engagement of architects and engineers to design the Facility.

EMPLOYEE means a full-time employee or full-time temporary worker.

EQUIPMENT means business personal property as determined by the appraisal district in which the property is located.

FACILITY means one or more research, industrial manufacturing and/or distribution complexes to be located in Mansfield, Texas.

IMPROVEMENTS mean the Facility and Real Property acquired to construct the Facility and Equipment at a cost anticipated to be approximately Seventy Six Million Dollars (\$76,000,000.00).

PROJECT means the expenditures by the Corporation as provided in this Agreement to facilitate the location and potential relocation and consolidation of various Klein Tools facilities into a comprehensive development in Mansfield.

REAL PROPERTY means real property which has or may be acquired in Mansfield, Texas by Zah Group or its affiliate.

3. **Term.**

This Agreement shall be effective as of the date of execution of all parties. This Agreement will terminate December 31, 2021, or as otherwise provided in this Agreement.

4. **Covenants of Zah Group.**

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

(1) Purchase a building in Mansfield, Texas for the purpose of establishing an advanced manufacturing technical center in the City, at a cost of Four Million Five Hundred Thousand Dollars (\$4,500,000.00) and place a purchase order of at least Six Million Dollars (\$6,000,000.00) of Equipment by December 31, 2010 (to be located in the building by December 31, 2011).

(2) Design (subject to approval by the City and the Corporation) and construct the Improvements in phases in accordance with the schedule set forth in Section 5 of this Agreement;

(3) Create and retain at least five hundred eighty-five (585) jobs at the Facility, according to the schedule set forth in Section 5;

(4) Purchase construction material for the Improvements from vendors within the City of Mansfield if available in Mansfield at a competitive price; and

(5) Operate the Facility for the term of this Agreement, after a certificate of occupancy is issued by the City.

b. Provided the Corporation has satisfied all financial and performance obligations in accordance with the schedule set forth in Section 5 of this Agreement, identify the Facility as the "USA Manufacturing Headquarters for Klein Tools" in nomenclature and documents no later than December 31, 2016.

c. Provided the Corporation has satisfied all financial and performance obligations in accordance with the schedule set forth in Section 5 of this Agreement, identify Mansfield, Texas on various Klein products manufactured and distributed from the Facility no later than December 31, 2012, if any.

d. Zah Group 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 2264.052 of the Texas Government Code, if Zah Group, or its branch, division or department is convicted of a violation under 8 U.S.C. Section 1324a(f), Zah Group shall repay the Corporation the full amount of the Payment made under this agreement, plus 10% per annum from the date the Payment was made. Repayment shall be paid within one hundred twenty (120) days after the date Zah Group receives notice of violation from the Corporation.

e. The parties acknowledge and agree that the covenants in Section 4(a) above are anticipated acts and if such acts are not met the incentives will be reduced proportionately.

5. Payments by Corporation.

a. **Performance Based Incentives.** The Corporation will pay to the Zah Group twelve (12) annual cash payments of Five Hundred Thousand Dollars (\$500,000.00) based upon the annual Capital Investment and job creation by the Zah Group within the City as set forth below, beginning no later than 12/31/2010. The proposed economic incentives are performance based and failure to meet annual benchmarks will result in a pro rata non-performance deduction of annual incentives granted, which can be earned back if the benchmark is met within the following twelve (12) months. Provided however, if the Zah Group fails to meet more than one consecutive annual benchmark, the missed annual grants will not be earned back. Benchmarks met early will be carried over and counted towards benchmark compliance in subsequent years. Prior to being entitled to the payment, the Zah Group shall certify its compliance with the benchmarks and shall provide to the Corporation reasonable documentation, as the Corporation may require, in writing to verify compliance. Corporation payments shall be made to Zah Group within thirty (30) days following receipt of reasonable documentation. Zah Group performance benchmarks and Corporation payments are outlined below:

Date	Company Performance Requirements	Corporation Payments	Non-Performance Deduction
12-31-10	<ul style="list-style-type: none"> • \$4.5M Bldg Purchase • \$6.0M Equipment Purchase 	1 st \$500K	<ul style="list-style-type: none"> • N/A
12-31-11	<ul style="list-style-type: none"> • \$6.0M Equipment Purchase • Engage Design Services for the Facility • 26 Employees 	2 nd \$500K	<ul style="list-style-type: none"> • Pro rata % Deduct on \$250K for Less Investment • Pro rata % Deduct on \$250K for Less than 26 Employees

Date	Company Performance Requirements	Corporation Payments	Non-Performance Deduction
12-31-12	<ul style="list-style-type: none"> • Approximately 60 +- Acre Property Under Contract in Mansfield • 100 Additional Employees • New Capital Investment of \$6M 	3 rd \$500K	<ul style="list-style-type: none"> • Pro rata % Deduct on \$250K for Less Investment • Pro rata % Deduct on \$250K for Less than 126 Employees
12-31-13	<ul style="list-style-type: none"> • Approximately 60 +- Acre Property Purchase in Mansfield • 30 Additional Employees • New Capital Investment of \$6M 	4 th \$500K	<ul style="list-style-type: none"> • Pro rata % Deduct on \$250K for Less Investment • Pro rata % Deduct on \$250K for Less than 156 Employees
12-31-14	<ul style="list-style-type: none"> • 50 Additional Employees • New Capital Investment of \$6M 	5 th \$500K	<ul style="list-style-type: none"> • Pro rata % Deduct on \$250K for Less Investment • Pro rata % Deduct on \$250K for Less than 206 Employees
12-31-15	<ul style="list-style-type: none"> • 100 Additional Employees • New Capital Investment of \$6.5M 	6 th \$500K	<ul style="list-style-type: none"> • Pro rata % Deduct on \$250K for Less Investment • Pro rata % Deduct on \$250K for Less than 306 Employees
12-31-16	<ul style="list-style-type: none"> • 85 Additional Employees • New Capital Investment of \$7M 	7 th \$500K	<ul style="list-style-type: none"> • Pro rata % Deduct on \$250K for Less Investment • Pro rata % Deduct on \$250K for Less than 391 Employees

Date	Company Performance Requirements	Corporation Payments	Non-Performance Deduction
12-31-17	<ul style="list-style-type: none"> • 100 Additional Employees • New Capital Investment of \$7M 	8 th \$500K	<ul style="list-style-type: none"> • Pro rata % Deduct on \$250K for Less Investment • Pro rata % Deduct on \$250K for Less than 491 Employees
12-31-18	<ul style="list-style-type: none"> • Maintain 491 Employees • New Capital Investment of \$7M 	9 th \$500K	<ul style="list-style-type: none"> • Pro rata % Deduct on \$250K for Less Investment • Pro rata % Deduct on \$250K for Less than 491 Employees
12-31-19	<ul style="list-style-type: none"> • 26 Additional Employees • New Capital Investment of \$7M 	10 th \$500K	<ul style="list-style-type: none"> • Pro rata % Deduct on \$250K for Less Investment • Pro rata % Deduct on \$250K for Less than 517 Employees
12-31-20	<ul style="list-style-type: none"> • 68 Additional Employees • New Capital Investment of \$7M 	11 th \$500K	<ul style="list-style-type: none"> • Pro rata % Deduct on \$250K for Less Investment • Pro rata % Deduct on \$250K for Less than 585 Employees
12-31-21	<ul style="list-style-type: none"> • Maintain 585 Employees 	12 th \$500K	<ul style="list-style-type: none"> • Pro rata % Deduct on \$250K for Less Investment • Pro rata % Deduct on \$250K for Less than 585 Employees

NOTE: The 60 +- Property is anticipated to be between 20-100 acres. In the event it is less or more than 60 acres, there shall be no reduction or expansion in incentives.

b. **Other incentives provided by the Corporation.**

(1) The Corporation will provide a reimbursement for offsite water and sewer infrastructure necessary for the new Improvements (to be constructed to the sixty (60) plus or minus acres the Zah Group anticipates to purchase by December 31, 2013) in an amount estimated at, but not to exceed, One Million Five Hundred Thousand Dollars (\$1,500,000.00). Corporation will reimburse Zah Group within ten (10) days of receipt of draw requests for the construction of the infrastructure or other such form as the parties agree.

(2) The Corporation has agreed to reimburse the cost of impact and building permit fees associated with the development during the first ten (10) years in an amount estimated at, but not to exceed, Eight Hundred Thousand Dollars (\$800,000).

(3) The Corporation has agreed to reimburse to the buyer one and one half percent (1 ½ %) of the sales price of any home purchased or built within the City of Mansfield by an employee of Zah Group (on a one time only basis per employee), not to exceed Three Thousand Seven Hundred Fifty Dollars (\$3,750.00) per home purchased, and not to exceed a cumulative total of One Hundred Twenty Five Thousand Dollars (\$125,000.00) for a period not to exceed ten (10) years from date of execution of this Agreement. The reimbursement shall occur within ten (10) days of receiving proof of the purchase.

6. **Improvements.**

Zah Group 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. The design of the Improvements must be approved by the MEDC Board (and such approval shall not be unreasonably withheld or delayed) prior to commencement of construction.

7. **Sign.**

Zah Group agrees to permit Corporation to erect a sign at the Facility which may state that the Corporation has provided funding for the Project, and to allow the Mansfield EDC to use the name The Zah Group and "Klein Tools", and representations of the Improvements and the Project in promotion of the City of Mansfield and the Corporation. The use of Zah Group's and Klein Tools' name on a sign shall be subject to Zah Group and Klein Tools approval, which shall not be unreasonably withheld, conditioned or delayed.

8. **Indemnification.**

ZAH GROUP, IN PERFORMING ITS OBLIGATIONS UNDER THIS AGREEMENT, IS ACTING INDEPENDENTLY, AND THE CORPORATION ASSUMES NO RESPONSIBILITIES OR LIABILITIES TO THIRD PARTIES IN CONNECTION WITH

THE PREMISES OR IMPROVEMENTS. ZAH GROUP 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 FROM A SUIT BY A THIRD PARTY, 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, LOSS OF USE, OR DAMAGE TO PROPERTY, ARISING OUT OF OR OCCURRING AS A CONSEQUENCE OF THE PERFORMANCE OF THIS AGREEMENT, INCLUDING ANY ERRORS OR OMISSIONS, OR NEGLIGENT ACT OR OMISSION OF THE CORPORATION, ITS OFFICERS, AGENTS OR EMPLOYEES; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF CORPORATION OR THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRENT NEGLIGENCE OF BOTH DEVELOPER AND CORPORATION, RESPONSIBILITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CORPORATION UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE TO ANY OTHER PERSON OR ENTITY.

9. **Access to Information.**

Zah Group 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 Zah Group to submit any necessary information, documents, invoices, receipts or other records to verify costs of the Improvements and Capital Expenditures related to the Project provided, however, Corporation agrees it will not make such requests more than two (2) times in any twelve (12) consecutive month period.

10. **General Provisions.**

a. **Mutual Assistance.** Zah Group and the Corporation shall do all things necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out the terms and provisions.

b. **Representations and Warranties.** Zah Group represents and warrants to the Corporation that it has the requisite authority to enter into this Agreement. Zah Group 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. **Attorneys Fees.** In the event any legal action or process is commenced to enforce or interpret provisions of this Agreement, the prevailing party in any such legal action shall be entitled to recover its necessary and reasonable attorneys' fees and expenses incurred by reason of such action.

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

f. **Amendment.** This Agreement may only be amended, altered, or revoked by written instrument signed by Zah Group and the Corporation.

g. **Successors and Assigns.** This Agreement shall be binding on and inure to the benefit of the parties, their respective successors and assigns. Zah Group 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. Notwithstanding the foregoing, written approval of Corporation shall not be required for an assignment to an Affiliate of Zah Group or its lender. "Affiliate of Zah Group" as used herein, includes any parent, sister, partner, joint venturer, or subsidiary entity of Zah Group; any entity in which Zah Group is a major shareholder, owns an equity interest, or is a joint venturer or partner (whether general or limited).

h. **Notice.** Any notice and/or statement required and permitted to be delivered 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:

ZAH GROUP: Zah Group, Inc.
Attn: Thomas R. Klein
450 Bond Street
Lincolnshire, IL 60069

With a copy to: Cantey Hanger, L.L.P.
600 West 6th Street, Suite 300
Fort Worth, TX 76102
Attn: Brian Newby

CORPORATION: Director
Mansfield Economic Development Corporation
301 S. Main Street
Mansfield, TX 76063

with a copy to: Betsy Elam
Taylor, Olson, Adkins, Sralla & Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, TX 76107

i. **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.

j. **Applicable Law.** This Agreement is made, and shall be construed and interpreted under the laws of the State of Texas and venue shall lie in Tarrant County, Texas.

k. **Severability.** In the event any provision of this Agreement is illegal, invalid, or unenforceable 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.

l. **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.

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

n. **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 another party (the "Complaining Party") to cure such default, the Complaining Party, by action or proceeding at law or in equity, may be awarded its damages and/or specific performance for such default.

o. **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 or all of the Property.

p. **Force Majeure.** If either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, 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.

**MANSFIELD ECONOMIC
DEVELOPMENT CORPORATION**

By: _____

_____, President

Date: _____

ATTEST:

By: _____

APPROVED AS TO FORM AND LEGALITY:

City Attorney

ZAH GROUP, INC.

By: _____

Thomas R. Klein
President, Secretary and Treasurer

Date: _____