

ECONOMIC DEVELOPMENT AND PERFORMANCE AGREEMENT BETWEEN THE MANSFIELD ECONOMIC DEVELOPMENT CORPORATION AND LONEJACK LLC.

This Economic Development Agreement ("Agreement") is made and entered into by and between Lonejack LLC, a Texas corporation by and through its Manager James Sellers and the Mansfield Economic Development Corporation ("Corporation") a nonprofit corporation organized under the Development Corporation Act of 1979, TEX. REV. CIV. STAT. ANN., art. 5190.6 § 4A ("Act"), for the purposes and considerations stated below. For convenience, Lonejack LLC and the Corporation may be hereinafter referred to collectively as "parties" and individually as a "party."

RECITALS:

WHEREAS, the Corporation owns a 8.81 and 10.01 acre parcels of real estate located within the corporate limits of the City of Mansfield, Texas ("City"), depicted on Exhibit A, (hereafter referred to as the "Property");

WHEREAS, the Corporation has determined and found that the Projects and Improvements, as defined herein, will create jobs as defined by the Act, and that the expenditure of the Corporation to assist in the development of a corporate headquarters facility as set forth in this Agreement is suitable or required for the development of a business expansion and relocation enterprise, and falls within the definition of a "Project" as defined in article 5190.6, Section 2(11) (A) of the Act;

WHEREAS, Lonejack LLC has represented to Corporation that they have a long term lease agreement with Sellmark Corp. to lease the project property for the purpose of locating the Sellmark Corp. offices and operations facilities.

WHEREAS, 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 Lonejack LLC development and operation of the Improvements (as hereinafter described), desires to have Lonejack LLC construct the Improvements and lease the facilities to Sellmark Corp. to operate a corporate headquarters and warehouse facility on the Property. This development will increase the taxable value of the Property and will directly and indirectly result in the creation of additional jobs throughout the City, the value of which will outweigh the amounts of expenditures required of the Corporation under this Agreement;

WHEREAS, the Corporation, to encourage the development and operation of the Property, desires to participate in the funding of the cost to construct certain infrastructure to the Property which is necessary in order for Sellmark to expand in Mansfield and operate as hereinafter set forth, to aid and promote economic development in the City;

NOW THEREFORE, inconsideration 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 TEX. REV. CIV. STAT. ANN., art. 5190.6, Section 4A.

2. **Definitions.**

“City” means the City of Mansfield, Texas.

“Capital Investment” means and shall include all hard construction costs and other costs of all buildings, structures, infrastructure, utilities, landscaping and other onsite and offsite improvements, but does not include the cost of the land or marketing expenses.

“Corporation” means the Mansfield Economic Development Corporation.

“Lonejack” means Lonejack LLC whose company contact is Manager James Sellers 1126 Brook Arbor Dr., Mansfield, Texas 76063 or his permitted successors or assigns.

“Facility” means a minimum 33,000 square foot building.

“Project A” means the offer by the Corporation of up 8.81 acres of real property to assist Lonejack with the construction costs of the facility in Phase 1 & 2.

“Project B” means the offer by the Corporation of an additional 10.01 acres of real property at a price of \$436,035.00, to be paid over a five-year period to assist Lonejack with the construction costs of the facility in Phase 3 & 4.

3. **Term.**

This Agreement shall be effective as of the date of execution of all parties. This Agreement will terminate December 31, 2019 or upon completion of all obligations imposed upon Lonejack and after the date the certificate of occupancy is issued by the City for each Facility, or as otherwise provided for in this Agreement.

4. **Covenants of Lonejack LLC**

a. In consideration of the Corporation agreeing to offer to Lonejack an approximately 8.81 acre site for Lonejack’s construction of phase 1 & 2 whose western boundary would be located approximately 500 ft. east of Mitchell Rd. and fronting on Heritage

Parkway and shown in exhibit "A", at no sales cost and in accordance with the terms and conditions of this Agreement, Lonejack agrees to:

(1) Lonejack to make a minimum capital investment of at least \$1.8 million and complete construction of at least a 33,000 sq. ft. first building on a 4.4 acre tract of land, as depicted in exhibit "B", by December 31, 2010. Such completion shall be evidenced by the issuance of a certificate of occupancy by the City. Lonejack will employ at least 45 total full-time employees by December 31, 2011 for a minimum of one year otherwise pay the Corporation \$191,880.00 (which is the current appraised value of the tract) for the 4.4 acres in phase 1, this employment requirement may be satisfied with employees of Sellmark at this location.

(2) Lonejack to construct a second building at a minimum of 33,000 sq. ft. with a total capital investment of at least \$1.4 million on an additional 4.4 acres by December 31, 2013 as depicted in exhibit "B", otherwise pay the Corporation the current appraised value at the time for the 4.4 acres in phase 2 or return the property to the Corporation at no cost to Corporation.

(3) Construct the Improvements in compliance with all applicable local ordinances and state and federal law (which shall conclusively be deemed to be fulfilled in the event of the issuance of a certificate of occupancy by the City); and

(4) Operate the Facility with a minimum of 45 full-time employees in compliance with all state and federal employment guidelines. Lonejack shall produce written documentation on or before December 31, 2011 to the Corporation which shall evidence Lonejack to be in compliance with this paragraph, the requirements of this provision may be satisfied through employees of Sellmark who work at the project site; and

(5) Lonejack shall make reasonable efforts to purchase construction material for the Facility from vendors within the City of Mansfield if available in Mansfield at a competitive price; and

(6) Operate the Facility for the term of this Agreement, after a certificate of occupancy is issued by the City; and

(7) Lonejack agrees to present to the Corporation a fully executed agreement for the long term lease of the project premises by Sellmark before Corporation is required to perform under this agreement. The lease shall contain a provision that in the event Lonejack is in breach of any provision of this agreement with Corporation, Corporation at its sole discretion may terminate Sellmark's lease and require vacating of the project property within 60 days notice.

b. Corporation further agrees to offer to Lonejack, upon compliance with all conditions in subsection "a", an approximately 10.01 acre site for Lonejack's construction Phase 3 & 4, adjacent to and east of the Phase 1 & 2 site and further depicted on exhibit "A", at a price of \$1.00 per sq. ft. (\$436,035.00 which is the current appraised value) and to be paid out in equal installments annually on or before June the

30th of each year with the final payment due in 2017. Should Lonejack fail to conclude the transaction and fail to begin Phases 3 & 4 by June 30, 2018 and conclude construction by December 31, 2019, as evidenced by a certificate of occupancy issued by the City, the Corporation will have the option to refund the monies paid toward the purchase of the 10.01 acres exclusive of any interest earned which shall be retained by Corporation. Lonejack will thereafter have no further right, claim or interest in said property and if necessary shall execute any document necessary to evidence such.

c. Corporation shall retain the right to entertain offers from others for the 10.01 acre tract. If Corporation receives an offer on said tract or any portion thereof and desires to act upon it Lonejack will be notified in writing return receipt requested of the proposed sales price. Upon receipt of said offer Lonejack shall have a ten (10) calendar days in which to exercise a first right of refusal and close on said 10.01 acre tract within 30 calendar days. If Lonejack fails to exercise its right of first refusal the Corporation at its sole option may refund the purchase monies paid by Lonejack exclusive of any interest earned and proceed with any other valid sale offer for the 10.01 acre site. Lonejack will thereafter have no further right, claim or interest in said property and if necessary shall execute any document necessary to evidence such.

d. In the event the Corporation sells the 10.01 acre site to another company, the Corporation would offer Lonejack a first right of refusal to purchase a 8.7 acre site located at the corner of Heritage Parkway and Mitchell Road, which would be used for Lonejack's phase 3 & 4 project and in accordance with the terms and conditions of this Agreement, Lonejack agrees to :

1. Render the Property to the Tarrant County Appraisal District and remain current on all property taxes for the term of this Agreement.
2. Should Lonejack fail to comply with any term of this Agreement, subject only to delays caused by matters beyond Lonejack's control (such as acceptance delays by any government authority) Lonejack shall have thirty (30) days after receipt of such written notice from the Corporation to take action to come into compliance and shall diligently pursue such action until compliance is achieved. If Lonejack fails to take action to come into compliance by the end of the thirty (30) day time period or to diligently pursue such action until compliance is achieved as determined by the Corporation in the Corporation's sole discretion, the Corporation will have the unconditional and absolute option to:

(A) Require Lonejack to remit to the Corporation a sum equal to payments made by the Corporation to Lonejack pursuant to this Agreement, plus interest at the highest rate allowable by law, per annum for the date payments were made.

e. Lonejack 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 Lonejack or its branch, division, or department is convicted of a violation under 8 U.S.C. Section 1324a (f), Lonejack shall repay to the Corporation the full amount of the Payment made under Section 5 of this Agreement, plus ten percent (10%) per annum from the date the payment was made. Repayment shall be paid within one hundred twenty (120) days after the date Lonejack receives notice of violation from the Corporation.

5. **Additional Offer to Assist**

The Corporation agrees to reimburse Lonejack up to \$140,000.00 for impact fees, power company charges for underground service, a 24 foot wide shared drive approximately 400 foot in length off of Heritage Parkway, half the cost of a 24 foot fire lane along the west side of the property and water and sewer line costs, all pertaining to Phase 1 & 2.

6. **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.

7. **Improvements.**

Lonejack 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 EDC Board (and such approval shall not be unreasonably withheld or delayed) prior to commencement of construction.

8. **Sign.**

Lonejack agrees to permit Corporation to erect a sign on the Property which may state that the Corporation has provided funding for the Project, and to allow the Corporation to use the name "Sellmark", and representations of the improvements and the Project in promotion of the City of Mansfield and the Corporation.

9. **Indemnification.**

LONEJACK 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 PROPERTY, PROJECT OR IMPROVEMENTS. LONEJACK 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 OF THIS AGREEMENT.

10. **Access to Information.**

Lonejack 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 Lonejack to submit any necessary information, documents, invoices, receipts or other records to verify costs of the Improvements and capital expenditures related to the Property.

11. **Mutual Assistance.**

Lonejack 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.

12. **Representations and Warranties.**

Lonejack represents and warrants to the Corporation that it has the requisite authority to enter into this Agreement. Lonejack represents and warrants to the Corporation that it will not violate any federal, state or local laws in operating the business, that all proposed Property Improvements shall conform to the applicable building codes, zoning ordinances and all other ordinances and regulations.

13. **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.

14. **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 attorney's fees and expenses incurred by reason of such action.

15. **Entire Agreement.**

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

16. **Amendment.**

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

17. **Successors and Assigns.**

This Agreement shall be binding on and inure to the benefit of the parties, their respective successors and assigns. Lonejack may assign all or part of its rights or interests obtained through this agreement and obligations hereunder only upon prior written approval of the Corporation which may be withheld at the sole discretion of the Corporation in considering the best interests of the corporation and/or city. This agreement may be recorded along with any title instruments.

18. **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:

Company: James Sellers
1126 Brook Arbor Dr.
Mansfield, Texas 76063

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

With a copy to: Craig Magnuson
City of Mansfield
1305 East Broad Street
Mansfield, Texas 76063

20. **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.

21. **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.

22. **Severability.**

In the event any provisions of this Agreement is held 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.

23. **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.

24. **No Joint Venture.**

Nothing contained in this Agreement is intended by the parties to create a partnership or joint venture between the parties.

25. **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.

26. **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, 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

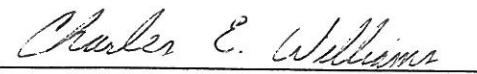
act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

**MANSFIELD ECONOMIC
DEVELOPMENT CORPORATION**

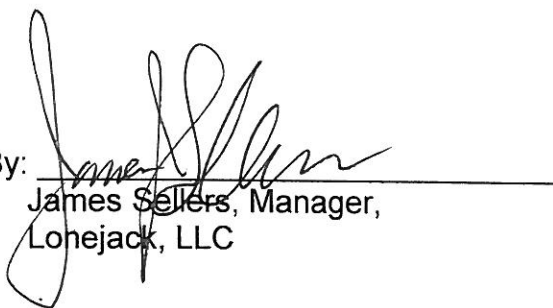
By: 
President

Date: 3/11/10

ATTEST:


Board Secretary

Date: 3-17-10

By: 
James Sellers, Manager,
Lonejack, LLC

Date: 3-22-10

APPROVED AS TO FORM:

Date: 3/10/10

