

**ECONOMIC DEVELOPMENT AND PERFORMANCE AGREEMENT
BETWEEN THE
MANSFIELD ECONOMIC DEVELOPMENT CORPORATION
AND
TALLEY'S 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 Talley’s LLC, a limited liability company (“**Company**”). Corporation and Company may sometimes hereafter be referred to individually as a “party” or collectively as the “parties.”

RECITALS:

WHEREAS, Company is the owner of a tract of land located at 2300 Matlock Road, in the City of Mansfield, Texas (“**Property**”); and

WHEREAS, Company intends to renovate and expand a restaurant and entertainment area on the Property (the “**Project**”); and

WHEREAS, the Corporation has determined that this Project promotes new or expanded business development, and the Project constitutes an eligible project under Texas law and is authorized by statute and the Sales and Use Tax Special Election on May 6, 2023 (Proposition “A”); and

WHEREAS, the Corporation has determined that providing the financial assistance requested under this Agreement is authorized by Proposition “A”, and applicable law, which allows the Corporation to use development sales tax for Type B economic development purposes, and will further the objectives of the Corporation, will benefit City and City’s inhabitants, and will promote local economic development and stimulate business and commercial activity in the City; and

WHEREAS, Company has requested financial assistance from the Corporation for the construction of the Improvements (defined below), and the Board of Directors of the Corporation finds that the requested Grant (defined below) is consistent with the programs and goals established by the Corporation and will be used to fund an eligible Project, and that such Grant is an expenditure related to Improvements that will promote new or expanded business development and is required or suitable for the development of restaurant and entertainment facilities.

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,” “Company,” “Project”, and “Property” have the meanings set forth above.

“Capital Investment” means the actual cost incurred related to the construction of the Facility, as the case may be, including the actual construction costs of all buildings, renovations, site preparation, structures, infrastructure, offsite improvements (if any), utilities, landscaping and onsite improvements, including labor and materials, engineering costs, surveying costs, fees of consultants, and permit and inspection fees. The term also includes costs related to the purchase of tangible personal property, as that term is defined in the Texas Tax Code, to be located at the Facility. It does not include cost of land, insurance costs, legal fees and expenses, marketing costs or any interest paid to finance the cost of Capital Investment.

“Certificate of Occupancy” means the document issued by the City certifying that a building is in compliance with applicable building codes and other laws, and indicating it to be in a condition suitable for occupation.

“City” means the City of Mansfield, Texas.

“Director” means the City’s Economic Development Director or acting Economic Development Director.

“Effective Date” means the date this Agreement is fully executed by the parties.

“Event of Bankruptcy or Insolvency” means the dissolution or termination of a party’s existence as a going business, insolvency, appointment of receiver for any part of such party’s property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against such party and such proceeding is not dismissed within ninety (90) days after the filing thereof.

“Expiration Date” shall mean six (6) years from the Effective Date, unless sooner terminated as provided herein.

“Facility” means the Vault and El Primo’s restaurants and entertainment venues to be renovated and expanded by Company on the Property.

“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 per week.

“Grant” means the payments to be made by the Corporation to Company pursuant to this Agreement as a reimbursement for a portion of the cost of the Improvements upon the terms, conditions and provisions set forth herein, such payments to an aggregate sum calculated as follows: the lesser of (i) 100% of the actual costs of the Improvements, or (ii) 5% of the Capital Investment, not to exceed \$200,000.

“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 the Property, or any property or any business owned by Company or within the City.

“Improvements” means the improvements approved by the Corporation for the renovation and expansion of restaurant and entertainment area, and grease trap and fire suppression infrastructure which are required by the City to be constructed or installed by Company on the Property, as described on the attached Exhibit A.

“Payment Request” means a written request from Company to Corporation for payment of a Grant. The written request must be accompanied by (i) proof of a Certificate of Occupancy for the Facility; (ii) documentation of the expenditure of the Capital Investment, in a manner and form acceptable to the Director; and (iii) documentation of actual construction costs of the Improvements, in a manner and form acceptable to the Director.

“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, all of the following must occur:

- (a) The Facility must receive a Certificate of Occupancy no later than December 31, 2025;
- (b) Company must make a Capital Investment of no less than \$2,500,000 for the Facility;
- (c) Company must comply with all building codes and other ordinances of the City applicable to the design and construction of the Facility and Improvements; and
- (d) Company must employ a minimum of thirty-five (35) FTEs at the Facility at the time of Certificate of Occupancy until the Expiration Date of this Agreement.

3.02 Tangible Personal Property. The parties acknowledge that Company will be contributing in the purchase of tangible personal property which is a component of the Capital Investment that will be used for and permanently located at the Facility, and agree that such purchase of tangible personal property for the Facility by Company will be applied toward Company's Capital Investment requirement as if Company had made the expenditure.

3.03 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 4 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

Provided that Company is in compliance with the terms of this Agreement, and upon Company's full satisfaction of the conditions set forth above in Article 3, Company may send Payment Requests to the Corporation for the Grant, whereupon the Corporation shall pay the amount of the Grant identified in the Payment Request to Company within thirty (30) days after approval by the Director. The total Grant payments made under this Agreement pursuant to the Payment Requests shall not exceed the aggregate sum calculated as follows: the lesser of (i) 100% of the actual costs of the Improvements, or (ii) 5% of the Capital Investment, not to exceed \$200,000.

ARTICLE 5 TERMINATION, OFFSET, AND REPAYMENT

5.01 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 any party, if another 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 or Insolvency;
- (d) upon written notice by Corporation, if any Impositions owed to City become delinquent and such delinquency has not been cured within thirty (30) days after written notice thereof; or

- (e) upon written notice by any party if any subsequent federal or state legislation or any decision of a court of competent jurisdiction renders this Agreement invalid, illegal, or unenforceable.

5.02 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 and Impositions) due to City of Mansfield, regardless of whether or not the debt (including taxes and Impositions) due to the City of Mansfield has been reduced to judgment by a court.

5.03 Repayment. In the event the Agreement is terminated by Corporation pursuant to Section 5.01(b)-(e), Company shall immediately refund to Corporation an amount equal to the amount of the Grants that have 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, which shall accrue from the Effective Date until paid.

ARTICLE 6 INDEMNIFICATION

COMPANY, IN PERFORMING THE OBLIGATIONS UNDER THIS AGREEMENT, IS ACTING INDEPENDENTLY, AND THE CORPORATION ASSUMES NO RESPONSIBILITIES OR LIABILITIES TO THIRD PARTIES OR COMPANY IN CONNECTION WITH THE IMPROVEMENTS OR FACILITY. COMPANY AGREES TO INDEMNIFY, DEFEND, RELEASE, 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 ITS OBLIGATIONS UNDER THIS AGREEMENT, INCLUDING ANY ERRORS OR OMISSIONS, OR NEGLIGENT ACT OR OMISSION OF COMPANY, OR ITS OFFICERS, AGENTS, EMPLOYEES, OR CONTRACTORS. THE PROVISIONS OF THIS SECTION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND THEIR RESPECTIVE SUCCESSORS AND PERMITTED ASSIGNS AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. THE COMPANY'S OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY COMPANY UNDER THIS AGREEMENT. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

ARTICLE 7
ACCESS TO INFORMATION

Notwithstanding any other provision to the contrary in this Agreement, all information, documents, and communications relating to this Agreement may be subject to the Texas Public Information Act and any opinion of the Texas Attorney General or a court of competent jurisdiction relating to the Texas Public Information Act. In addition to the foregoing sentence, the Corporation may be required to submit to the comptroller the information as required by Texas Local Gov't Code Sec. 380.004, and any other information the comptroller considers necessary to operate and update the database described by Section 403.0246, Government Code. Upon the Corporation's written request, Company agrees to provide the Corporation, within thirty (30) days of the Company's receipt of such request, access to contract documents, invoices, receipts, records, and reports to verify Company's compliance with this Agreement.

ARTICLE 8
GENERAL PROVISIONS

8.01 Mutual Assistance. The parties 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.

8.02 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 constructing or operating the Facility, and that the Facility and Improvements shall conform to the applicable building codes, zoning ordinances, and all other ordinances and regulations of the City of Mansfield.

8.03 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.

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

8.05 Amendment. This Agreement may only be amended, altered, or revoked by written instrument signed by the parties.

8.06 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 their rights and obligations hereunder only upon prior written approval of the Corporation.

- (b) Collateral Assignment. Notwithstanding Section 8.06(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 Facility and Improvements, all rights, title, and interests of Company to receive the Grants 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.

8.07 Notice. Any notices or other communications required or permitted by this Agreement shall be in writing and delivered personally, or by messenger or a nationally recognized overnight courier service, or alternatively, shall be sent by United States certified mail, return receipt requested. The effective date of any notice shall be (i) if by personal delivery, messenger or courier service, the date of delivery of the notice, or (ii) if mailed, on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as undeliverable, as the case may be. The parties hereby designate the addresses set forth below as their respective notice addresses under this Agreement.

COMPANY: Talley's LLC
2300 Matlock Road
Mansfield, Texas 76063
Attn: Bobby Clark

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

8.08 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.

8.09 Applicable Law/Venue. The substantive laws of the State of Texas (and not its conflicts of law principles) govern all matters arising out of, or relating to, this Agreement and all of the transactions it contemplates, including without limitation its validity, interpretation, construction, performance and enforcement. Mandatory and exclusive venue for any action arising out of, or relating to, this Agreement must be in a court of competent jurisdiction in Tarrant County, Texas.

8.10 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.

8.11 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.

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

8.13 Force Majeure. If any 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 any party under this Agreement.

8.14 Attorney's Fees. If either party employs an attorney or attorneys to enforce any of the provisions hereof, or to recover damages for the breach of this Agreement, the non-prevailing party in any final judgment or award agrees to pay the other party all reasonable costs, charges and expenses, including reasonable attorneys' fees and costs of court, expended or incurred in connection therewith.

8.15 Limitation of Liability. The parties further agree that no party will be liable to any other party under this Agreement for special, consequential (including lost profits), or exemplary damages.

8.16 Governmental Function(s). The parties agree that this Agreement serves the public purpose of assisting in the development and diversification of the economy of City and the State of Texas, eliminating unemployment or underemployment of the State, and developing and expanding commerce in the State, and is for all purposes a governmental function of the City and the Corporation for the benefit of the citizens of City and the State of Texas. The parties further agree that this Agreement is entered into for the purpose of carrying out governmental functions which are enjoined on Corporation, by virtue of its relationship with its authorizing unit, the City of Mansfield, by law, and given to it by the State of Texas as part of the State's sovereignty.

8.17 Grant Limitations. Under no circumstances shall the obligations of the Corporation hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision; provided, however, the Corporation agrees during the term of this Agreement to make a good faith effort to appropriate funds to pay the Grant for this Agreement. Further, the Corporation shall not be obligated to pay any lienholder, commercial bank, lender, or similar person or financial institution for any loan or credit agreement made by the Company.

8.18 City Council Approval. This Agreement is not valid unless first approved by the City Council of the City of Mansfield.

8.19 Full Execution Required. This Agreement will not be binding on any party unless fully executed by all parties.

{Signatures on following page}

**MANSFIELD ECONOMIC
DEVELOPMENT CORPORATION**

By: _____
David Godin, Board President

Date: _____

ATTEST:

Nicole Zaitoon, Board Secretary

Talley's LLC
a Texas limited liability company

By: Bobby Clark

Name: Bobby Clark

Title: CFO

Date: 9/15/24

EXHIBIT "A"
Improvements