

ECONOMIC DEVELOPMENT AND PERFORMANCE AGREEMENT BETWEEN THE MANSFIELD ECONOMIC DEVELOPMENT CORPORATION AND CARLETON /MR MANSFIELD PARTNERS, LTD.

This Economic Development Agreement (“Agreement”) is made and entered into by and between CARLETON/MR Mansfield Partners, Ltd. (Carleton), a Texas limited partnership, by and through its managing general partner, Carleton GP III, Inc., a Texas corporation and the Mansfield Economic Development Corporation (the “Corporation”), a nonprofit corporation organized under Title 12, Subtitle C1 of the Texas Local Government Code, for the purposes and considerations stated below:

RECITALS:

1. CARLETON intends to construct improvements on a vacant parcel of land located in the area of 1620 Mansfield Webb Road within the corporate limits of the City of Mansfield and more specifically identified herein in Exhibit A and hereafter referred to as the “Property.”

2. The Corporation has determined and found that the Project and Improvements, as defined herein, is suitable or required for the development of a new business enterprise, and falls within the definition of a “project” as defined in Title 12, Subtitle C1 of the Texas Local Government Code.

3. 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 CARLETON’s development and operation of the Improvements (as hereinafter described), desires to have CARLETON construct the Improvements 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 and the value of the benefits of the Project will outweigh the amount of expenditures required of the Corporation under this Agreement.

4. 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 CARLETON to locate its improvements in Mansfield and operate as hereinafter set forth, to 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 Title 12, Subtitle C1 of the Texas Local Government Code.

2. **Definitions.**

CAPITAL INVESTMENT means the costs of all improvements to the Property, to include equipment, structures, infrastructure and other onsite improvements.

CITY means the City of Mansfield, Texas.

IMPROVEMENTS mean the construction of approximately 271,325 square feet of buildings by CARLETON consisting of, at a minimum, 15,440 square feet of retail space (up to 23,754 square feet) at the Property before the termination of this Agreement.

PROPERTY has the meaning set forth in Recital 1 above.

PROJECT means the expenditure by the Corporation of up to One Hundred Forty Eight Thousand Three Hundred Twenty Five Dollars (\$148,325) to assist CARLETON with the construction of a deceleration lane and roadway, water meter, and sewer impact fees, and items directly related to these expenses.

3. **Term.**

This Agreement shall be effective as of the date of execution by all parties. This Agreement will terminate five (5) years after the date the certificate of occupancy is issued by the City for the last building at the Property, but not later than December 31, 2018.

Subject to section 9(g), this Agreement may be assigned, transferred or otherwise assumed by a third party providing that such third party agrees in writing to assume all liabilities, responsibilities, and obligations of CARLETON satisfactory to the Corporation. Upon written approval by the Corporation of such assumption, assignment or transfer, CARLETON shall thereafter be released from its obligations hereunder. Corporation shall not unreasonably refuse, unreasonably delay, or unreasonably condition its approval provided the Corporation is reasonably satisfied that the assignee will comply with all terms of this agreement.

4. **Covenants of CARLETON.**

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

(1) Make a Capital Investment in the Property, the Improvements, and equipment affixed to the Property in an amount

expected to be \$24,000,000 and which shall in no event be less than \$22,500,000, before the termination of this Agreement;

(2) Construct and obtain leasing tenants for approximately 23,754 square feet of retail space at the Property;

(3) Operate the Improvements for the term of this Agreement, after receiving the certificates of occupancy from the City;

(4) Obtain a Certificate of Occupancy for the shell retail buildings by December 31, 2013; and

(5) Render the Property to the Tarrant County Appraisal District and remain current on all property taxes for the term of this Agreement.

(b) For purposes of determining CARLETON's compliance with the preceding provisions of this Section 4, the term "CARLETON" shall be deemed to include not only CARLETON (as defined in the first paragraph of this Agreement) but also all purchasers, ground lessees, tenants, sub-tenants, successors, assigns, or other persons or entities occupying or conducting business on or from the Property on a continuing basis.

(c) Should CARLETON fail to comply with any term of this Agreement, CARLETON shall have thirty (30) days after written notice from the Corporation to come into compliance. If the noncompliance is not cured within that period, CARLETON agrees to remit to the Corporation a sum equal to payments made by the Corporation to CARLETON pursuant to this Agreement.

(d) CARLETON 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 CARLETON or its branch, division, or department is convicted of a violation under 8 U.S.C. Section 1324a (f), CARLETON shall repay to the MEDC 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 CARLETON receives notice of violation from the Corporation.

5. **Payments by Corporation.**

(a) The Corporation shall participate with CARLETON in the actual cost of the Project not to exceed One Hundred Forty Eight Thousand Three Hundred Twenty Five Dollars (\$148,325) (the "Corporation Commitment") for the Project. CARLETON's right to

payments shall commence upon the issuance by the City of a certificate of occupancy for each retail space leased from Carleton, their agent or their successor in interest. The payments shall be calculated at a maximum of Five Dollars and Eighty Two Cents (\$5.82) per sq. ft. leased. The Corporation shall make payments to CARLETON within 30 days after the issuance of each certificate of occupancy. CARLETON will promptly provide a copy of the certificate of occupancy from the City of Mansfield and will submit to the Corporation documentation reasonably satisfactory to the Corporation evidencing the expenditures for the Capital Investment.

(b) If, pursuant to the approved PD for the Project, CARLETON reduces the square footage of retail space at the Property during the term of this Agreement, the aggregate amount to be funded by the Corporation pursuant to this Agreement shall be proportionately reduced.

6. **Improvements.**

CARLETON 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 Board of the Corporation (and such approval shall not be unreasonably withheld, unreasonably conditioned, or unreasonably delayed) prior to commencement of construction.

7. **Indemnification.**

CARLETON 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 or improvements. CARLETON 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, including any errors or omissions, or negligent act or omission of CARLETON, its officers, agents or employees.

8. **Access to Information.**

CARLETON agrees to provide the Corporation access to information related to the construction of the Improvements and Project during regular business hours upon reasonable prior notice. The Corporation shall have the right to require CARLETON to submit any reasonably necessary information, documents, invoices, receipts or other records to verify costs of the Improvements and capital expenditures related to the Property.

9. **General Provisions.**

(a) **Mutual Assistance.** CARLETON 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 the terms and provisions hereof.

(b) **Representations and Warranties.** CARLETON represents and warrants to the Corporation that it has the requisite authority to enter into this Agreement. CARLETON represents and warrants to the Corporation that it will not violate any federal, state or local laws in operating the Improvements and, 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 attorney's fees and expenses incurred by reason of such action, in accordance with Section 271.159 of the Texas Local Government Code. Provided, however, all reasonable attorneys' fees incurred by the Corporation for preparation or review of any revision, modification or amendment of this Agreement proposed by CARLETON following the original execution of this Agreement, and all reasonable attorneys' fees incurred for preparation or review of other proposed additional or related documents shall be at CARLETON's sole cost.

(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 CARLETON and the Corporation.

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

(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:

CARLETON: Carleton / MR Mansfield Partners, LTD.
5485 Beltline Road, Suite 300
Dallas, Texas 75254

With a copy to: Kendall D. Adair
Harris, Finley & Bogle, P.C.
777 Main Street, Suite 3600
Fort Worth, TX 76102

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

(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 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.

(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 of 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 (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, weather which is both severe and unseasonal, 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:

APPROVED AS TO FORM AND LEGALITY:

City Attorney

**CARLETON / MR MANSFIELD
PARTNERS, LTD.**

By: Carleton GP III, a Texas
corporation, its managing general
partner

By: _____
Printice Gary, President

Date: _____