ECONOMIC DEVELOPMENT AND PERFORMANCE AGREEMENT BETWEEN THE MANSFIELD ECONOMIC DEVELOPMENT CORPORATION AND ASH JOINT VENTURE LTD

This Economic Development Agreement ("Agreement") is made and entered into by and between the MANSFIELD ECONOMIC DEVELOPMENT CORPORATION (the "Corporation"), a nonprofit corporation organized under Title 12, Subtitle C1, of the Texas Local Government Code (the "Act"), and ASH JOINT VENTURE LTD ("Ash JV"), a Texas Limited Partnership, for the purposes and considerations stated below:

RECITALS:

1. Ash JV owns property located at 102 Sentry Drive (hereafter referred to as the "Property"), within the corporate limits of the City of Mansfield ("City"), where Ash JV plans to make certain improvements to the Facility located on the Property to make the Facility more marketable for new Tenants.

2. Ash JV intends to make a new Capital Investment in the Property of at least Four Hundred Fifty Thousand Dollars ($450,000.00) to construct the Development.

3. The Corporation has determined and found that the requested grant will be used to fund a "project" as defined in Section 501.101 of the Act; specifically, that the expenditure of the Corporation is required or suitable for manufacturing, industrial or warehouse use, or other qualifying use under Section 501.101 of the Act.

4. The Corporation, which has determined that substantial economic benefit and the creation of new opportunities for employment will accrue to the City as a result of Ash JV's capital investment in the Property, desires to have Ash JV make the capital investment in the Property. This project will increase the taxable value of the Property and will directly result in the creation of jobs at the Facility and will indirectly result in the creation of additional jobs throughout the City. As a consequence, the value of the benefits of the Project (as defined herein) will substantially outweigh the amount of expenditures required of the Corporation under this Agreement.

5. The Corporation, to encourage the development and operation of the Property, develop a new business and to obtain the benefits stated in this Agreement, desires to participate in the funding of the cost of certain Improvements (hereinafter defined) which are necessary in order for Ash JV to make the capital investment in the Property and to operate the Facility as hereinafter set forth, which will 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 the Act.

2. Definitions.

ASH JV has the meaning set forth in the Recitals.

CAPITAL INVESTMENT means the actual cost incurred by Ash JV related to the construction and installation of the Improvements to the Facility.

CERTIFICATE OF OCCUPANCY means the document issued by the City of Mansfield for the Facility certifying the 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.

ELIGIBLE IMPROVEMENT means the fire suppression/interior sprinkler system component of the Improvements.

FACILITY means the existing industrial building comprised of approximately 135,000 square feet on an approximate 9 acre tract located at 102 Sentry;

PRIMARY JOBS 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 and falling under the definition of primary jobs in Section 501.002(12) of the Act.

IMPROVEMENT COSTS means the Capital Investment by Ash JV for the Improvements.

IMPROVEMENTS means the addition of fire suppression/interior sprinkler systems, ADA compliance upgrades, backflow prevention systems, and electrical disconnects at the FACILITY.

PAYMENT means the payment made by the Corporation to Ash JV under the terms and conditions of this Agreement.

PROJECT means the payment by the Corporation to Ash JV of up to One Hundred Thousand Dollars ($100,000) for the actual Capital Investment expended for the Eligible Improvements according to the formula set forth in this Agreement.

PROPERTY has the meaning set forth in the Recitals.

3. **Term.**

This Agreement shall be effective as of the date of execution of all parties and will continue to be in force for five (5) years or until the final Payment is made, whichever occurs first, unless terminated earlier under the terms of this Agreement.

4. **Covenants of Ash JV.**

a. In consideration of Corporation agreeing to pay Ash JV monies in accordance with the terms and conditions of this Agreement, Ash JV agrees to:

(1) Make a total Capital Investment for the Improvements on or before December 31, 2017 in an amount of no less Four Hundred Fifty Thousand Dollars ($450,000)

(2) Obtain a Certificate of Occupancy for the Facility no later than December 31, 2017;

(3) Enter into a minimum 5 year lease with a manufacturing, industrial or warehouse tenant, or other tenant approved by the Corporation, by December 31, 2018.

(4) Cause to be created through leases of the Facility a minimum of twenty (20) Primary Jobs over the term of this Agreement and retain them for the term of this Agreement;

(5) Render the Facility to the Tarrant County Appraisal District and remain current on all ad valorem taxes for the term of this Agreement; and

(6) Provide documentation to the Corporation for the Capital Investment for the Improvements in a manner acceptable to the Corporation.

b. Should Ash JV fail to comply with any term of this Agreement, Ash JV shall have thirty (30) days after written notice from the Corporation to come into compliance. If the noncompliance is not cured within that period, or an agreement on a time frame to come into compliance is not reached with the Corporation, Ash JV will forfeit its right to reimbursement by the Corporation. In the event Ash JV's uncured noncompliance occurs after a grant of funds is received, Ash JV shall immediately upon demand repay the Corporation a portion of the grant of funds received by Ash JV under this Agreement plus ten percent (10%) interest per annum which shall accrue from the date of default until the date the debt is repaid in full.

c. Ash JV 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 Ash JV is convicted of a violation under 8 U.S.C. Section 1324a (f), Ash JV 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 Ash JV receives a notice of violation from the Corporation.

5. <u>Payments by Corporation.</u>

a. Provided Ash JV is in compliance with each term of this Agreement, the Corporation shall participate in the cost of Eligible Improvements, up to One Hundred Thousand Dollars ($100,000) according to this section.

b. In order for Ash JV to receive the Payment, Ash JV must submit to the Corporation:

(1) Evidence of a Capital Investment in an amount no less than Four Hundred Fifty Thousand Dollars ($450,000) for the Improvements.

(2) Evidence of the actual cost expended for the Eligible Improvements.

(3) A signed lease with a tenant in compliance with Sections 4.a(3) and (4) for a term of no less than five (5) years.

(4) A Certificate of Occupancy for the Facility.

c. The Corporation will make a Payment to Ash JV within thirty (30) days of Ash JV's compliance with Section 5.b. above.

d. The Payment shall be in the amount of the actual cost expended for the Eligible Improvements not to exceed One Hundred Thousand Dollars ($100,000).

6. <u>Improvements.</u>

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

7. <u>Indemnification.</u>

ASH JV, 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 PROPERTY OR IMPROVEMENTS. ASH JV 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 BY ASH JV OF THE OBLIGATIONS UNDER THIS AGREEMENT, INCLUDING ANY ERRORS OR OMISSIONS, OR NEGLIGENT ACT OR OMISSION OF ASH JV, OR THE OFFICERS, AGENTS OR EMPLOYEES.

8. Access to Information.

Ash JV agrees to provide the Corporation access to information related to the Project during regular business hours upon reasonable notice. The Corporation shall have the right to require Ash JV to submit any reasonably necessary information, documents, invoices, receipts or other records to verify Ash JV's compliance with this Agreement.

9. General Provisions.

a. **Mutual Assistance.** Ash JV 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.

b. **Representations and Warranties.** Ash JV represents and warrants to the Corporation that it has the requisite authority to enter into this Agreement. Ash JV represents and warrants to the Corporation that it will not violate any federal, state or local laws in operating the business, that all proposed Infrastructure 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. **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the transaction contemplated herein.

e. **Amendment.** This Agreement may only be amended, altered, or revoked by written instrument signed by Ash JV and the Corporation.

f. **Successors and Assigns.** This Agreement shall be binding on and insure to the benefit of the parties, their respective successors and assigns. Ash JV

may assign all or part of its rights and obligations hereunder only upon prior written approval of the Corporation.

g. **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:

ASH JV:	Ash Joint Venture LTD 1703 Peyco Dr. N. Arlington, Texas76001-6701
CORPORATION:	Mansfield Economic Development Corporation 301 South Main Street Mansfield, Texas 76063 Attn: Director
With a copy to:	Betsy Elam Taylor, Olson, Adkins, Sralla & Elam, LLP 6000 Western Place, Suite 200 Fort Worth, Texas 76107

h. **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.

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

j. **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.

k. **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.

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

m. **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 the other party (the "Complaining Party") to cure such default, the Complaining Party, by action or proceeding at law or in equity, may seek recovery of its actual (but not consequential or punitive damages) for such default and/or specific performance of such obligation.

n. **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.

o. **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.

p. **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.

MANSFIELD ECONOMIC DEVELOPMENT CORPORATION

By: _____
Larry Klos, Board President

Date: 7-5-16

ATTEST:

_____
Board Secretary

ASH JOINT VENTURE LTD

By: Elizabeth Y Cross

Printed Name: Elizabeth Y Cross

Title: President Peyco Properties
Managing Partner

Date: May 4, 2016

ACKNOWLEDGEMENT

BEFORE ME, the undersigned authority, on this date personally appeared Elizabeth Y Cross who after being duly sworn stated that he is the Manager of PEYCO, a General Partner of **ASH JOINT VENTURE LTD** , and that he signed the foregoing instrument on behalf of said entity in the capacity and for the purposes expressed therein.

NOTARY PUBLIC STATE OF TEXAS
KATHI FRAWLEY
Notary ID # 126471959
My Commission Expires
April 4, 2020

Kathi Frawley
Notary Public

My commission expires: April 4, 2020

Date: May 4, 2016