

**ECONOMIC DEVELOPMENT AND PERFORMANCE AGREEMENT BETWEEN
THE MANSFIELD ECONOMIC DEVELOPMENT CORPORATION AND
M.R. DEVELOPMENT CORPORATION AND CARLETON DEVELOPMENT, LTD.**

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 M.R. DEVELOPMENT CORPORATION, a Texas corporation, and CARLETON DEVELOPMENT, LTD., a Texas limited partnership, or their assignee (collectively, “**Company**”). Company and Corporation may sometimes hereafter be referred to individually as a “party” or collectively as the “parties.”

RECITALS:

WHEREAS, Company is the developer of a Project, hereinafter defined, known as CAMPBELL DEVELOPMENT located, in the City of Mansfield, Texas (the “Property”), as further described in **Exhibit A**, attached hereto and incorporated herein for all legal purposes; and

WHEREAS, Company intends to develop the Project as further described in **Exhibit B**, attached hereto and incorporated herein for all legal purposes; and

WHEREAS, as a component of the development of the Project, Company will be constructing roadway improvements on Harmon Road, as shown in **Exhibit C**, attached hereto and incorporated herein for all legal purposes; and

WHEREAS, Company has requested financial assistance from Corporation for the construction of the improvements, and the Board of Directors of Corporation find that the requested grants will be used to fund a “project” as defined in Section 501.103 of the Act and that such grants are required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises.

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

“Capital Investment” means the actual cost incurred related to the construction of the Project, 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, business personal property, engineering costs, surveying costs, fees of consultants, permit and inspection fees, and other soft costs of

construction, but not land cost, 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 and its commercial tenant 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.

"Commencement of Construction" shall mean (i) the plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for construction of the Commercial Development, as the case may be; (ii) all necessary permits for the construction of the Commercial Development, as the case may be, have been issued by the applicable governmental authorities; and (iii) construction of the foundation for the Commercial Development has commenced.

“Commercial Development” means the construction of an approximately 1,200 square foot portion of the Project to be developed by Company on the Property, as shown on the attached Exhibit B.

“Director” means the Executive Director of the Mansfield Economic Development Corporation, or his or her designee.

“Effective Date” means the date this Agreement is fully executed by both Corporation and Company.

“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 three years from the Effective Date, unless sooner terminated as provided herein.

“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 without regard to whether individuals in those positions are the same as those in previous counts.

“Grants” means the payments to be made by Corporation to Company pursuant to this Agreement as a reimbursement for a portion of the cost of the Improvements, the aggregate of such payments being 100% of the actual costs of the Improvements, but in no event an amount not to exceed \$323,400. The Grants will be paid in two equal installments, as described in Article 4. Each individual payment shall mean a “Grant.”

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

“Improvements” means the Harmon Road improvements constructed by Company, as shown and described on the attached **Exhibit C**.

“Payment Request #1” means a written request from Company to Corporation for payment of 50% of the Grants. The written request must be accompanied by (i) proof of Commencement of Construction; and (ii) documentation of actual construction costs of the Improvements, in a manner and form acceptable to the Director.

“Payment Request #2” means a written request from Company to Corporation for payment of the remaining 50% of the Grants. The written request must be accompanied by proof of a Certificate of Occupancy for the Commercial Development.

“Project” means the mixed-use development as further illustrated in **Exhibit B**.

“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 or extended for a Force Majeure Event 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, Company, agrees to:

- (a) Take all actions necessary to receive a Certificate of Occupancy for the Commercial Development no later than June 30, 2026;
- (b) Make a Capital Investment of no less than \$60,000,000 for the Project, including the Commercial Development;
- (c) Make the Improvements on the Property; and
- (d) Comply with all building codes and other ordinances of the City applicable to the design and construction of the Commercial Development and Improvements.

3.02 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 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 is convicted of a violation.

ARTICLE 4 GRANTS BY CORPORATION

Provided that Company is in compliance with the terms of this Agreement, no default then exists and remains uncured by Company, and upon full satisfaction by Company of the conditions set forth above in Article 3, Corporation will pay Company the Grants in two (2) equal installments as stated in this Article. Corporation shall pay the first Grant within thirty (30) days of receipt of Payment Request #1 from Company. Corporation shall pay the second Grant within thirty (30) days of receipt of Payment Request #2 from Company.

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 either party, if the other party defaults or breaches any material terms or conditions of this Agreement and such default or breach is not cured within thirty (30) days after written notice thereof sent by the non-defaulting party to the defaulting party;
- (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 by Company become delinquent and such delinquency has not been cured within thirty (30) days after written notice thereof sent by Corporation to Company; or
- (e) upon written notice by either 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) lawfully due to City by Company, regardless of whether the amount due arises pursuant to the terms of this Agreement, or otherwise, and regardless of whether or not the

debt due to City has been reduced to a judgment by a court. Such offset right shall not apply to any sum timely and properly protested and contested in accordance with applicable law.

5.03 Repayment. In the event the Agreement is terminated by Corporation pursuant to Section 5.01(b)-(d), 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 commercial 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 CORPORATION ASSUMES NO RESPONSIBILITIES OR LIABILITIES TO THIRD PARTIES IN CONNECTION WITH THE IMPROVEMENTS OR PROJECT. COMPANY AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS 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 THE 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 NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

ARTICLE 7 ACCESS TO INFORMATION

Upon Corporation's request, Company agrees to provide Corporation access to contract documents, invoices, receipts, records, reports, and any other documentation necessary to verify Company's compliance with this Agreement.

ARTICLE 8 GENERAL PROVISIONS

8.01 Mutual Assistance. Company and 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.

8.02 Representations and Warranties. Company represents and warrants to Corporation that it has the requisite authority to enter into this Agreement. Company represents and warrants to Corporation that it will not violate any federal, state or local laws in operating the business, and that the Project, including but not limited to Commercial Development, and Improvements shall conform to the applicable building codes, zoning ordinances and all other ordinances and regulations.

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 Company and Corporation.

8.06 Successors and Assigns.

- (a) Assignment. This Agreement shall be binding on and inure to the benefit of the parties, their respective successors and assigns. Company may assign all or part of its rights and obligations hereunder only upon prior written approval of Corporation, such approval not to be unreasonably withheld, conditioned or delayed.
- (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 Commercial Development 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 Corporation, which shall not be unreasonably delayed, conditioned, or withheld, and Corporation agrees to execute such reasonable consent forms as may be required to evidence such consent; (ii) shall require notice to 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 Corporation's legal counsel; provided, however, the Director may, in his or her sole discretion, present the assignment request to Corporation's board of directors for approval.

8.07 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, properly addressed to the appropriate party at the following addresses, or at such other addresses provided by the parties in writing:

COMPANY: Carleton Development, Ltd.
4201 Spring Valley Road, Suite 800
Dallas, Texas 75244
Attn: Jeff Fulenchek

M.R. Development Corporation
100 North Mitchell Road
Mansfield, Texas 76063
Attn: Kim McCaslin

With copy to: Harris, Finley & Bogle, P.C.
777 Main Street, Suite 1800
Fort Worth, Texas 76102
Attn: Kendall D. Adair

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. Each of the parties acknowledge that each party to this Agreement has been represented by counsel in connection with this Agreement. Legal or equitable principles that might require the construction of this Agreement or any provision hereof against the party drafting this Agreement shall not apply in any construction or interpretation of this Agreement and is expressly waived. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

8.09 Applicable Law/Venue. This Agreement is made, and shall be construed and interpreted under the laws of the State of Texas; exclusive venue for any legal action regarding this Agreement shall lie 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 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 any of the following (each a “**Force Majeure Event**”): 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 or not within the reasonable control 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, upon written notice to the other party as soon as practically possible after the occurrence of the Force Majeure Event, 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.

8.14 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.

8.15 Limitation of Liability. The parties further agree that neither party will be liable to the other under this Agreement for special, consequential (including lost profits), or exemplary damages.

8.16 Governmental Function. 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 City 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, by law, and given to it by the State of Texas as part of the State's sovereignty.

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

8.18 Full Execution Required. This Agreement will not be binding on either party until fully executed by both parties.

Signature Page Follows

EXECUTED by Corporation, signing by and through its Board President, duly authorized to execute same and by Company, acting through its duly authorized officials.

"Corporation"
MANSFIELD ECONOMIC
DEVELOPMENT CORPORATION

By: _____
David Godin, Board President

ATTEST:

Nicole Zaitoon, Board Secretary

"Company"
M. R. DEVELOPMENT CORPORATION,
a Texas corporation

By: _____
Kim McCaslin, Vice President

CARLETON DEVELOPMENT, LTD.,
a Texas limited partnership

By: GH Southwest II, Inc.,
a Texas corporation
its general partner

By: _____
Jeffrey Fulenchek, Vice President

MANSFIELD ECONOMIC DEVELOPMENT CORPORATION

STATE OF TEXAS §

COUNTY OF TARRANT §

This instrument was acknowledged before me on the _____ day of _____, 2023, by David Godin, President of the Board of Directors of the Mansfield Economic Development Corporation.

Notary Public in and for the State of Texas

M.R. DEVELOPMENT CORPORATION

STATE OF TEXAS §

COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 2023, by Kim McCaslin, President of MR Development, LLC.

Notary Public in and for the State of Texas

CARLETON DEVELOPMENT, LTD.

STATE OF TEXAS §

COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 2023, by Jeff Fulenchek, Vice-President of GH Southwest II, Inc., a Texas corporation, the general partner of Carleton Development, Ltd., a Texas limited partnership.

Notary Public in and for the State of Texas

EXHIBIT “A”

Property

EXHIBIT “B”

Project

EXHIBIT “C”

Improvements