

**ECONOMIC DEVELOPMENT AND PERFORMANCE AGREEMENT BETWEEN  
THE MANSFIELD ECONOMIC DEVELOPMENT CORPORATION AND  
KROGER TEXAS, L.P.**

This Economic Development Agreement (“Agreement”) is made and entered into by and between Kroger Texas LP. (KROGER), an Ohio limited partnership, by and through its Vice President, Joseph W. Bradley and the Mansfield Economic Development Corporation (the “Corporation”), a nonprofit corporation organized under Title 12, of the Texas Local Government Code, for the purposes and considerations stated below:

**RECITALS:**

1. KROGER intends to make improvements to the property located at 3001 Matlock Road within the corporate limits of the City of Mansfield and hereafter referred to as the “Property.”
2. The Corporation has determined and found that the Project and Improvements, as defined herein, will create jobs as defined in Title 12, Chapter 501 of the Texas Local Government Code, and that the expenditure of funds of the Corporation to assist in the development of the facility as set forth in this Agreement 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, Chapter 501 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 the City as a result of KROGER’s development and operation of the Improvements (as hereinafter described), desires to have KROGER 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 and Facility which is necessary in order for KROGER to locate its facility 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, Chapter 501 of the Texas Local Government Code.

## **2. Definitions.**

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

CITY means the City of Mansfield, Texas.

FACILITY means the property located at 3001 Matlock Road in Mansfield, Texas.

IMPROVEMENTS mean the improvements to be constructed on the Property by KROGER.

PROJECT means installation of a fire hydrant and storm water improvements.

## **3. Term.**

This Agreement shall be effective as of the date of execution of all parties. This Agreement will terminate five (5) years after the date the certificate of occupancy is issued by the City for the Facility.

Subject to Section 8(g), Kroger's rights and obligations under this Agreement may be assigned, transferred or otherwise assumed by a third party, provided that such third party agrees in writing to assume all liabilities, responsibilities, and obligations of KROGER hereunder. Upon such written assumption, assignment or transfer, KROGER shall thereafter be released from its obligations hereunder.

## **4. Covenants of KROGER.**

- a. In consideration of Corporation agreeing to pay KROGER monies in accordance with the terms and conditions of this Agreement, KROGER agrees to:
  - i. Make a Capital Investment in the Facility in an amount equal to at least eleven million dollars (\$11, 000,000) in real property improvements to the Facility and to obtain a Certificate of Occupancy from the City for the Facility by December 31, 2016.
  - ii. Own and manage the Facility during the term of this Agreement, subject to assignment as provided in Section 3, after receiving a certificate of occupancy from the City; and

- iii. Render the Property to the Tarrant County Appraisal District and remain current on all property taxes for the term of this Agreement.
  
- b. Should KROGER fail to comply with any of its obligations under this Agreement, KROGER shall have thirty (30) days after written notice from Corporation to come into compliance. If the noncompliance is not cured within that period, KROGER agrees to remit to the Corporation a sum equal to all payments made by the Corporation to KROGER pursuant to this Agreement and/or waive any further payment due by the Corporation to KROGER.
  
- c. KROGER 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 KROGER or its branch, division, or department is convicted of a violation under 8 U.S.C. Section 1324a (f), KROGER shall repay to the Corporation the full amount of all payments made under Section 5 of this Agreement, plus ten percent (10%) per annum from the date such payment was made. Repayment shall be paid within one hundred twenty (120) days after the date KROGER receives notice of violation from the Corporation.

#### **5. Payments by Corporation.**

Corporation shall reimburse to KROGER the cost of the Project, not to exceed Seventy Thousand Dollars (\$70,000), to be paid, for actual costs incurred by KROGER for the Project, within 30 days after the Facility receives a certificate of occupancy from the City of Mansfield and submission to the Corporation of reasonably satisfactory documentation evidencing the expenditures for the Capital Investment and the expenditures required by Section 4(a) (1) herein, provided KROGER is in compliance with Section 4 of the Agreement.

#### **6. Improvements.**

KROGER 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.

#### **7. Indemnification.**

KROGER 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. KROGER 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 KROGER OF ITS OBLIGATIONS UNDER THIS AGREEMENT, INCLUDING ANY ERRORS OR OMISSIONS, OR NEGLIGENT ACT OR OMISSION OF KROGER, ITS OFFICERS, AGENTS OR EMPLOYEES, EXCEPT TO THE EXTENT CAUSED BY THE NEGLIGENT ACT OR OMISSION OF THE PARTY TO BE INDEMNIFIED.

#### **8. Access to Information.**

The Corporation shall have the right to require KROGER 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.** KROGER 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.** KROGER represents and warrants to the Corporation that it has the requisite authority to enter into this Agreement. KROGER represents and warrants to the Corporation 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. **Attorney's 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 attorney's fees incurred by the Corporation for preparation or review of any revision, modification or amendment of this Agreement proposed by KROGER following the original execution of this Agreement, shall be at KROGER'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 KROGER 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. KROGER may assign all or part of its rights and obligations hereunder only upon prior written approval of the Corporation, which approval shall not be unreasonably withheld or delayed.
- 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:

KROGER:                    Kroger Texas L.P.  
                                  Joseph W. Bradley  
                                  Vice President & Assistant Treasurer  
                                  1014 Vine St.  
                                  Cincinnati, OH 45202

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 the other 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 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.

**MANSFIELD ECONOMIC  
DEVELOPMENT CORPORATION**

By: \_\_\_\_\_  
President

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
City Attorney

**Kroger Texas L.P.**

By: \_\_\_\_\_  
KRGP Inc., its general partner

Date: \_\_\_\_\_