

AGREEMENT BETWEEN THE MANSFIELD ECONOMIC DEVELOPMENT CORPORATION AND HERITAGE PARKWAY PARTNERS LLC

This agreement ("Agreement") is made and entered into by and between HERITAGE PARKWAY PARTNERS LLC, a Texas limited liability company ("Company") and the MANSFIELD ECONOMIC DEVELOPMENT CORPORATION ("Corporation"), a nonprofit corporation organized under Title 12, Subtitle C1, of the Texas Local Government Code. Company and the Corporation may sometimes hereafter be referred to individually as a "party" or collectively as the "parties."

RECITALS:

WHEREAS, Company and Corporation previously entered into that Economic Development Agreement ("ED Agreement," as attached hereto as Exhibit A) whereby Company, as developer of a 17.5-acre tract north of FM 917 and between 2nd Avenue and the planned extension of Antler Drive and an approximate 12 acre tract immediately adjacent to the north (the "12 Acre Tract," as more particularly described in Exhibit A to the Memorandum of Option between Company and RMA Holdings, LLC, and being Instrument No. 2016-24858 of the Johnson County Real Property Records) agreed to make certain improvements, and in return, the Corporation would make reimbursement payments to Company; and

WHEREAS, Company has made a portion of the drainage channel improvements under the ED Agreement; and

WHEREAS, Company, as fee owner of the 12 Acre Tract, desires to sell the 12 Acre Tract to RMA Holdings, LLC ("RMA"); and

WHEREAS, the transfer of the 12 Acre Tract to RMA will allow RMA to streamline its development and operation of a freezer, refrigerator and dry storage warehouse space on the 12 Acre Tract; and

WHEREAS, Corporation would like to make payment to Company in consideration of Company transferring title to RMA; and

WHEREAS, the Corporation has determined and found that the expenditures contemplated by this Agreement will be used towards a "project" as defined in Section 501.101 of the Act; specifically, that the expenditure of the Corporation will be used for land, buildings, equipment (if it is subject to business personal property taxation under the Texas Tax Code) and improvements that are for the creation of primary jobs and that are required or suitable for the development, retention or expansion of a manufacturing and industrial facility; and

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 AGREEMENTS

1. In consideration of Company conveying the 12 Acre Tract to RMA, Corporation agrees to pay Company the sum of \$122,551.12 ("Payment"). Corporation will make the Payment to Company within 15 days of Corporation receiving sufficient documentation that fee title to the 12 Acre Tract has been transferred to RMA.
2. Upon receipt of the Payment, the parties agree that the ED Agreement is terminated and of no effect, and the parties will have no further obligations to each other. The parties further agree that Company is not entitled to any additional payments under the ED Agreement.
3. In the event Company does not convey fee title to the 12 Acre Tract to RMA Holdings, LLC by October 27, 2017 at 5:00 p.m., Corporation may terminate this Agreement upon written notice to Company.

ARTICLE 2 MISCELLANEOUS

- 1 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:

COMPANY: George M. Sakakeeny
 Manager
 100 Colonial Square
 Colleyville, TX 76034

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

2. 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.
3. 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.
4. 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.

5. 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.

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

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

**MANSFIELD ECONOMIC
DEVELOPMENT CORPORATION**

By: Larry Klos, Board President

Date: _____

ATTEST:

Board Secretary

HERITAGE PARKWAY PARTNERS LLC,
a Texas limited liability company

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A

The ED Agreement

**ECONOMIC DEVELOPMENT AND PERFORMANCE AGREEMENT BETWEEN
THE MANSFIELD ECONOMIC DEVELOPMENT CORPORATION AND
HERITAGE PARKWAY PARTNERS LLC**

This Economic Development Agreement ("Agreement") is made and entered into by and between HERITAGE PARKWAY PARTNERS LLC,, a Texas limited liability company ("Heritage") 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. Heritage is the developer of the majority of a 30± acre tract north of FM 917 and between 2nd Avenue and the planned extension of Antler Drive within the corporate limits of the City of Mansfield ("City") depicted on Exhibit "A" (hereafter referred to as the "Property") and intends to make certain improvements to the Property as more particularly set forth in this Agreement.
2. 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 will be used for land, buildings and improvements that are for the creation of primary jobs and that are required or suitable for the development, retention or expansion of a manufacturing and industrial facility.
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 Heritage's development and operation of the Property, desires to have Heritage construct the Improvements on the Property. This project will increase the taxable value of the Property and will directly and indirectly result in the creation of additional jobs including Primary 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.
4. The Corporation, to encourage the development and operation of the Facility, desires to participate in the funding of the cost of the Improvements which are necessary in order for Heritage to construct the Facility in Mansfield, 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 Title 12, Subtitle C1, Chapter 501 of the Texas Local Government Code.

2. **Definitions.**

CITY means the City of Mansfield, Texas.

CONSTRUCTION AND DESIGN COSTS means the actual costs incurred related to the construction of the Improvements including site preparation, equipment rental, labor and materials, Mitigation Bank Credits, environment studies, engineering costs, surveying costs, permit, inspection and legal fees. It does not include insurance costs, impact fees and expenses, marketing costs or any interest paid to finance the Construction and Design Costs.

FACILITY means the freezer, cold storage and dry goods warehouses located on the Property, comprised of at least 465,000 square feet, to be constructed in four phases.

IMPROVEMENTS mean infrastructure, and site work necessary to construct the Facility including drainage, earthen channels and sanitary sewer.

MITIGATION BANK CREDITS means credits required to be purchased in order to fill in the existing erosion feature, including the removal of trees and vegetation in and around the erosion feature

PROJECT means the reimbursement by the Corporation of up to Four Hundred Thousand Dollars (\$400,000) for the cost of Improvements, allocated as follows:

- Actual Construction and Design Costs, not to exceed \$70,000 for Sanitary Sewer improvements;
- Actual Construction and Design Costs, not to exceed \$55,000 for the Eastern Channel drainage;
- Actual Construction and Design Costs, not to exceed \$175,000 for Mitigation Bank Credits;
- Actual Construction and Design Costs, not to exceed \$200,000 for the Northern Channel drainage, to include up to \$25,000 for a waiver of surface use rights paid to Chesapeake.

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. This Agreement will continue to be in force and effective until June 30, 2024.

4. **Covenants of Heritage.**

a. In consideration of Corporation agreeing to reimburse Heritage monies in accordance with the terms and conditions of this Agreement, Heritage agrees to complete the Improvements no later than March 31, 2017 and to provide the Corporation with documentation satisfactory to the Corporation showing expenditures for the Improvements

b. Should Heritage fail to comply with any term of this Agreement, Heritage shall have one hundred and twenty (120) 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, Heritage will forfeit the right to reimbursement by the Corporation. In the event Heritage's uncured noncompliance occurs after the grant of funds is received, Heritage shall within one hundred and twenty (120) days of demand for payment by the Corporation repay the Corporation an amount equal to all payments made under Section 5 of this Agreement plus ten percent (10%) per annum or the maximum rate permitted by law from the date the payments were made until the date of full repayment.

c. Heritage covenants and certifies that he 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 Heritage is convicted of a violation under 8 U.S.C. Section 1324a (f), Heritage 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 until the date of full repayment. Repayment shall be paid within one hundred twenty (120) days after the date Heritage receives a notice of violation from the Corporation.

5. **Payments by Corporation.**

The Corporation shall participate with Heritage in the cost of the Project not to exceed Four Hundred Thousand Dollars (\$400,000) to be reimbursed to Heritage to construct the Improvements, upon City inspection, if required, and satisfactory proof of the expenditures for the Improvements and the mitigation bank credits, within 30 days submission to the Corporation of satisfactory documentation evidencing the expenditures for the Improvements, Mitigation Bank Credits.

6. **Improvements.**

Heritage 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.**

HERITAGE, 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. HERITAGE 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 HERITAGE OF THE OBLIGATIONS UNDER THIS AGREEMENT, INCLUDING ANY ERRORS OR OMISSIONS, OR NEGLIGENT ACT OR OMISSION OF HERITAGE, OR THE OFFICERS, AGENTS OR EMPLOYEES.

8. **Access to Information.**

Heritage agrees to provide the Corporation access to information related to the construction of the Improvements and Project during regular business hours upon reasonable notice. The Corporation shall have the right to require Heritage 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.** Heritage 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.** Heritage represents and warrants to the Corporation that it has the requisite authority to enter into this Agreement. Heritage represents and warrants to the Corporation that it will not violate any federal, state or local laws in operating the business, 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. **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 Heritage 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. Heritage 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 provided reasonably satisfactory guaranties are provided to insure compliance with all terms of this Agreement. Upon written approval by Corporation of such assumption, assignment or transfer, Heritage shall thereafter be released from its obligations hereunder.

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:

HERITAGE PARKWAY PARTNERS LLC: George M. Sakakeeny
Manager
100 Colonial Square
Colleyville, TX 76034

CORPORATION: Director
Mansfield Economic Development Corporation
301 South Main Street
Mansfield, Texas 76063

With a copy to: City Attorney
City of Mansfield
1200 East Broad Street
Mansfield, Texas 76063

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.

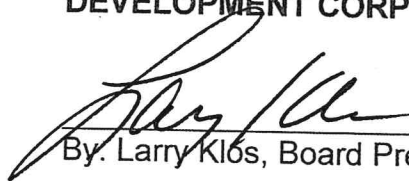
l. **No Joint Venture.** Nothing contained in this Agreement is intended by the parties to create a partnership or joint venture between the parties.

m. **Default.** If a party should default (the "Defaulting Party") in any material respect with 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, or in the event the default cannot be cured within thirty (30) days to commence curing it, the Complaining Party, by action or proceeding at law or in equity, may be awarded its actual but not consequential damages and/or specific performance for such default.

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, delay in delivery of power by the utility company, delay in delivery of utilities, 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 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: Larry Klos, Board President

Date: 9-21-16

ATTEST:

[Signature]
Board Secretary

APPROVED AS TO FORM AND LEGALITY:

[Signature]
Attorney for the Corporation

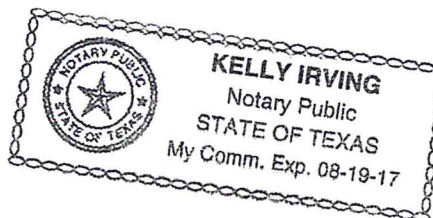
HERITAGE PARKWAY PARTNERS LLC

By: George M Sakakeeny
Manager

Date: 9-21-16

ACKNOWLEDGEMENT

BEFORE ME, the undersigned authority, on this date personally appeared George M. Sakakeeny, who after being duly sworn stated that he is a Manager of Heritage Parkway Partners LLC, and that he signed the foregoing instrument on behalf of said entity for the purposes expressed therein.



Kelly Irving
Notary Public, in and for the State of Texas

My commission expires: 8/19/17

Date: 9/21/16