

**AMENDED AND RESTATED
ECONOMIC DEVELOPMENT AND PERFORMANCE AGREEMENT BETWEEN THE
MANSFIELD ECONOMIC DEVELOPMENT CORPORATION AND
HOFFMAN CABINETS, INC.**

This Amended and Restated 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 HOFFMAN CABINETS, INC., a Texas corporation (“**Company**”). Company and the Corporation may sometimes hereafter be referred to individually as a “party” or collectively as the “parties.”

RECITALS:

WHEREAS, Company is the owner two existing manufacturing facilities located within the City of Mansfield, Texas; and

WHEREAS, Company intends to make a capital investment for new equipment at its existing facilities; and

WHEREAS, Company further intends to expand its business by constructing a new 81,000 square foot facility; and

WHEREAS, as a component of the construction of the new facility, Company will be constructing fire lanes, fire protection, water utility improvements, and related improvements; and

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

WHEREAS, the parties previously entered into that Economic Development Agreement executed on October 2, 2018 (“**Original Agreement**”); and

WHEREAS, this Agreement is intended to amend, restate and replace the Original Agreement in its entirety.

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

“Capital Investment” means (i) the actual cost incurred related to the construction of the Facility, 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, engineering costs, surveying costs, fees of consultants, and permit and inspection fees; and (ii) the actual cost related to the purchase and installation of new equipment within the Existing Facilities. It does not include cost of land, 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 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.

“Director” means the City’s Economic Development Director or acting Economic Development Director.

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

“Existing Facilities” means the Company’s current facilities located at 204 Sentry Drive and 1206 Antler Drive.

“Expiration Date” shall mean six years from the Effective Date, unless sooner terminated as provided herein.

“Facility” means the 81,000 square foot industrial building to be constructed by Company on the Property.

“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 the Corporation to Company pursuant to this Agreement as a reimbursement for a portion of the cost of the Improvements upon the terms, conditions and provisions set forth herein, such payments to a sum calculated as follows: the lesser of: (i) 100% of the actual costs of the Improvements, or (ii) \$514,000. The Grants will be paid in three payments as described in Article 4, and each payment is referred to as 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 fire lane, fire protection, and water improvements constructed by Company on the Property, as identified on the attached Exhibit A.

“Payment One” and “Payment Two” have the meanings set forth in Article 4 of this Agreement.

“Payment Request” means a written request from Company to Corporation for payment of a Grant, which request shall be accompanied by evidence reasonably satisfactory to Corporation to establish that Company is in compliance with this Agreement, including documentation of purchasing and construction costs of the Improvements, expenditure of the Capital Investment, and the number of FTEs at the Facility.

“Property” means Lot 11-R1, Block B, Sentry Industrial Park, an addition to the City of Mansfield, Texas and more commonly known as 1210 Antler Drive, Mansfield, Texas.

“Required Use” means the continuous operation of the Facility as a business manufacturing cabinets, furniture finishes, cabinet doors, and wood moulding.

“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.

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) Do the following no later than March 31, 2020:
 - (i) Make a Capital Investment in an amount no less than \$7,750,000 for the Facility and Existing Facilities;
 - (ii) Complete the Improvements;
 - (iii) Design and construct the Facility and Improvements in compliance with all local, state, and federal codes and regulations, including, but not limited to building codes and other ordinances of the City of Mansfield; and
 - (iv) Obtain a Certificate of Occupancy for the Facility; and
- (b) After receipt of a Certificate of Occupancy, continuously operate and occupy the Facility for the purpose of the Required Use (operation and occupancy must not cease for more than thirty (30) days, except in connection with and to the extent of Force Majeure); and
- (c) Create and maintain minimum of fifteen (15) FTEs at the Facility within five (5) years of the Effective Date

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 the 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 receives a notice of violation from the Corporation.

ARTICLE 4

GRANTS BY CORPORATION

4.01 Grants. Provided Company is in compliance with each term of this Agreement, the Corporation shall make the Grants, not to exceed the aggregate of \$514,000, to be paid to Company as follows:

- (a) After Company has satisfied the conditions set forth above in Section 3.01(a), make a Grant to Company in the amount of \$160,000.00 (“**Payment One**”) within thirty (30) days after receiving a Payment Request;
- (b) Within thirty (30) days after receiving a Payment Request, but no earlier than one year after Company’s receipt of Payment One, make a Grant to Company in the amount of \$160,000.00 (“**Payment Two**”); and

(c) Within thirty (30) days after receiving a Payment Request, but no earlier than one year after Company's receipt of Payment Two, make a final Grant to Company in the amount of \$194,000.00.

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 of the terms or conditions of this Agreement and such default or breach is not cured within thirty (30) days after written notice thereof;
- (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 to City by Company become delinquent and such delinquency has not been cured within thirty (30) days after written notice thereof; 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 of Mansfield 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 the City of Mansfield has been reduced to 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 has 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 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 THE CORPORATION ASSUMES NO RESPONSIBILITIES OR LIABILITIES TO THIRD PARTIES IN CONNECTION WITH THE IMPROVEMENTS, EXISTING FACILITIES, OR FACILITY. COMPANY AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE 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.

ARTICLE 7 ACCESS TO INFORMATION

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

ARTICLE 8 GENERAL PROVISIONS

8.01 Mutual Assistance. Company 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.

8.02 Representations and Warranties. Company represents and warrants to the Corporation that it has the requisite authority to enter into this Agreement. Company represents and warrants to the Corporation that it will not violate any federal, state or local laws in operating the business, and that the Facility 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 the Corporation.

8.06 Successors and Assigns.

(a) Assignment. This Agreement shall be binding on and insure 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 the Corporation.

(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 Facility and Improvements, all rights, title, and interests of Company to receive the Grant under this Agreement. Such collateral assignments: (i) shall require the prior written consent of the Corporation, which shall not be unreasonably delayed or withheld, and the Corporation agrees to execute such reasonable consent forms as may be required to evidence such consent; (ii) shall require notice to the 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 the Corporation's legal counsel; provided, however, the Director may, in his or her sole discretion, present the assignment request to the 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, addressed to the appropriate party at the following addresses, or at such other addresses provided by the parties in writing:

COMPANY: Hoffman Cabinets, Inc.
204 Sentry Drive
Mansfield, Texas 76063
ATTN: Jon Hoffman, President

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. 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.

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 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.

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 the Corporation, by virtue of its relationship with its authorizing unit, the City of Mansfield, 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 the City of Mansfield.

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

**MANSFIELD ECONOMIC
DEVELOPMENT CORPORATION**

By: _____
Larry Klos, Board President

Date: _____

ATTEST:

Board Secretary

HOFFMAN CABINETS, INC.
a Texas corporation

By: _____
Jon Hoffman, President

Date: _____

EXHIBIT “A”

Improvements