

## ECONOMIC DEVELOPMENT AGREEMENT

This Economic Development Agreement (“**Agreement**”) is made and entered into by and between the City of Mansfield, Texas, a Texas home rule municipal corporation of the State of Texas (the “**City**”), the Mansfield Economic Development Corporation (“**MEDC**”), a nonprofit Corporation organized under Title 12, Subtitle C1, of the Texas Local Government Code (“**Act**”), and 6.44 Holdings, LLC, a Texas limited liability company (“**Company**”). City, MEDC, and Company may sometimes hereafter be referred to individually as a “party” or collectively as the “parties.”

### RECITALS:

**WHEREAS**, Company owns approximately 6.44 acres of land as more particularly described on the attached **Exhibit A** (the “**Property**”); and

**WHEREAS**, Company intends to develop the Property in phases for a mixed-use project consisting of approximately 60,000 square feet of Class A+ office space, 16,000 square feet of retail, restaurant or medical office space, with parks and civic space for the enjoyment of the public (collectively the “**Project**”); and

**WHEREAS**, Company has advised MEDC that a contributing factor that would induce Company to construct the Project would be an agreement by MEDC to provide economic development grants to Company as set forth herein; and

**WHEREAS**, MEDC has determined that MEDC Grants (as defined below) to be made hereunder are required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises and constitute a “project”, as that term is defined in the Act; and

**WHEREAS**, MEDC has further determined that expenditures are for the creation or retention of primary jobs and are required or suitable for the development, retention, or expansion of primary job training facilities for use by institutions of higher education and regional or national corporate headquarters; and

**WHEREAS**, MEDC has determined that making the MEDC Grants and expenditures in accordance with this Agreement will further the objectives of MEDC, will benefit City and City’s inhabitants, and will promote local economic development and stimulate business and commercial activity in City; and

**WHEREAS**, MEDC intends on granting approximately \$1,500,000 per year for seven years, specific to the Class A+ office building in Phase 1 and within the Project; and

**WHEREAS**, MEDC finds that the grant payments provided to Company under this Agreement are for the public purposes of: (i) developing and diversifying the economy of City and the state; (ii) eliminating unemployment and underemployment in the state; (iii) developing and expanding commerce in the state; (iv) stimulating business and commerce within City; and (v) promoting development and redevelopment within City; and

**WHEREAS**, City may also provide City grants, as defined herein, to Company pursuant to Chapter 380 of the Texas Local Government Code in the future, and by separate agreement, in consideration of Company bringing the Project to City; and

**WHEREAS**, City has concluded and hereby finds that this Agreement promotes economic development in City, and, as such, meets the requirements of Article III, Section 52- a of the Texas Constitution, by assisting in the development and diversification of the economy of the State of Texas and City, by eliminating unemployment or underemployment in the State of Texas and City, and will enhance business and commercial activity within the State of Texas and City.

**NOW THEREFORE**, in consideration of the premises and the mutual covenants contained herein and other valuable consideration the sufficiency and receipt of which are hereby acknowledged, the parties agree as follows:

### **ARTICLE 1 DEFINITIONS**

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the terms defined in this Article have the meanings assigned to them in the Recitals or this Article, and all such terms include the plural as well as the singular.

“Affiliate” of Company means any other person directly controlling, or directly controlled by or under direct common control with Company. As used in this definition, the term “control,” “controlling,” or “controlled by” shall mean the possession, directly, of the power either to (a) vote fifty percent (50%) or more of the securities or interests having ordinary voting power for the election of directors (or other comparable controlling body) of Company, or (b) direct or cause the direction of management or policies of Company, whether through the ownership of voting securities or interests, by contract or otherwise, excluding in each case, any lender of Company or any affiliate of such lender.

“Approved Plans” mean the plans and specifications relating to the design and construction of the Public Infrastructure, inclusive of any change orders thereto, which are in compliance with all City rules and regulations, and approved by City.

“Building Final” means the approval of the final inspection issued by City certifying a building’s compliance with applicable building codes and other laws, and indicating it to be in condition suitable for further construction of interior finish out for a specific tenant(s).

“Capital Investment” means Company's capitalized costs for the design and construction of Phase 1 of the Project (inclusive of all hard and soft costs). Capital Investment does not include the cost of the land or rights-of-way.



“Certificate of Occupancy” means the document issued by 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.

“City Council” means the city council of City.

“City Manager” means city manager of City, or his or her authorized designee.

“Commencement of Construction” means (i) the plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for construction of Phase 1, as the case may be; (ii) all necessary permits for the construction of Phase 1, as the case may be, have been issued by the applicable governmental authorities; and (iii) construction of the foundations for buildings within Phase 1, as the case may be, has commenced.

“Director” means City’s economic development director or his or her authorized designee.

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

“Eligible Costs” means with respect to the Public Infrastructure, the costs incurred and paid by Company for the design, permitting, and construction of the Public Infrastructure, not including costs for legal fees, permit fees, the costs of the land, interest, finance, the cost of financing, management fees, right-of-way, or easements.

“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.

“Force Majeure” means any act that (i) materially and adversely affects the affected party’s ability to perform the relevant obligations under this Agreement or delays such affected party’s ability to do so; (ii) is beyond the reasonable control of the affected party; (iii) is not due to the affected party’s fault or negligence; and (iv) could not be avoided, by the party who suffers it, by the exercise of commercially reasonable efforts. “Force Majeure” shall include: (a) natural phenomena, such as storms, floods, lightning and earthquakes, and inclement construction weather (except as provided below); (b) wars, civil disturbances, revolts, insurrections, terrorism, sabotage and threats of sabotage or terrorism; (c) transportation disasters, whether by ocean, rail, land or air; (d) strikes or other labor disputes that are not due to the breach of any labor agreement by the affected party, shortages in labor or materials; (e) fires; (f) epidemics or pandemics where shut-down of commercial construction or the manufacturing of supplies relating thereto has been ordered by a governmental authority; and (g) actions or omissions of a governmental authority (including the actions of City in its capacity as a governmental authority) that were not voluntarily induced or promoted by the affected party, or brought about by the breach of its obligations under

this Agreement or any applicable law or failure to comply with City regulations; provided, however, that under no circumstances shall Force Majeure include any of the following events: (1) economic hardship; (2) changes in market condition; (3) any strike or labor dispute involving the employees of Company or any Affiliate of Company, other than industry or nationwide strikes or labor disputes; (4) during construction, weather conditions which could reasonably be anticipated by experienced contractors operating the relevant location; or (5) any delay, default or failure (financial or otherwise) of the general contractor or any subcontractor, vendor or supplier of Company, or any construction contracts for the Public Infrastructure or the Project.

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

“Lease Gap” has the meaning set forth in Article 5.

“Maximum Public Infrastructure Amount” means the lesser of (i) the Eligible Costs; or (ii) \$6,000,000.

“MEDC Grants” mean the economic development payments to be paid by MEDC to Company in the amount equal to the costs incurred and paid by Company for Eligible Costs for Public Infrastructure not to exceed the Maximum Public Infrastructure Amount, as verified by MEDC, to be paid in installments as set forth herein. Each individual payment is considered individually as an “MEDC Grant.”

“Payment Request” means a written request from Company to Director for payment of the applicable installment of the MEDC Grants, accompanied by the applicable written application for payment, copies of invoices, bills, receipts, and such other information, as may reasonably be requested by Director, evidencing the Eligible Costs incurred and paid by Company for the Public Infrastructure and Company’s continued satisfaction of this Agreement. Once Company has submitted copies of invoices, bills, and receipts for Eligible Costs equal to the Maximum Public Infrastructure Amount, Company is not required to include such items in any subsequent Payment Request.

“Phase 1 Infrastructure” means public infrastructure to be constructed in accordance with the Approved Plans consisting of public streets (including signage and signals), sanitary sewer mains, storm drainage facilities, sidewalks along public streets, green area, landscaping, water mains, related utility facilities (including, but not limited, exterior lighting of streets, sidewalks, parking and other areas, and irrigation), and other public improvements associated with the development of Phase 1 of the Project in accordance with the approved zoning and the subdivision control ordinance.



“Phase 1” means that portion of the Project consisting of an office building of at least four (4) stories in height containing a minimum of 60,000 square feet of gross rentable office space, and associated parking and landscaping to be constructed on the Property in accordance with the approved zoning and the subdivision control ordinance.

“Phase 2” means that portion of the Project consisting of 16,000 square feet of retail, restaurant or medical office space to be constructed on the Property in accordance with the approved zoning and the subdivision control ordinance.

“Phase 2 Infrastructure” means public infrastructure to be constructed in accordance with the Approved Plans consisting of public streets, sanitary sewer mains, storm drainage facilities, sidewalks along public streets, green area, landscaping, water mains, related utility facilities (including, but not limited, exterior lighting of streets, sidewalks, parking and other areas, and irrigation), and other public improvements associated with the development of Phase 2 of the Project in accordance with the approved zoning and the subdivision control ordinance.

“Public Infrastructure” means the Phase 1 Infrastructure and Phase 2 Infrastructure.

“Term” means the term of this Agreement as described in Article 2 of this Agreement.

## ARTICLE 2 PROGRAM AND TERM

2.1 Term. The term of this Agreement shall commence on the Effective Date and shall continue until the parties have fully satisfied all terms and conditions of this Agreement unless sooner terminated as provided herein.

2.2 Program. A program authorized under Chapter 380 of the Texas Local Government Code is hereby established to bring the Project to City. The terms of this Agreement implement the program.

## ARTICLE 3 COMPANY OBLIGATIONS

3.1 Compliance with Laws. Construction of the Public Infrastructure and the Project must be done in accordance with all applicable federal, state, and local laws, codes, and regulations. Company agrees that before platting the Property, it will file applications with City requesting (i) rezoning of the Property to “S, South Mansfield Form-Based Development District” (“**Zoning District**”) and (ii) approval of concept and phasing plans and any other requirements of the Zoning District.

3.2 Regulations Regarding Building Products, Materials, or Methods. The parties find that the Property constitutes an area of architectural importance and significance and the City Council hereby designates it as an area of architectural importance and significance for purposes of Chapter 3000 of the Texas Gov’t Code (the “**Code**”). In consideration for the mutual covenants and conditions contained herein and pursuant to §3000.002(d) of the Code, Company voluntarily consents to the application of all City rules, charter provisions, ordinances, orders, building codes, and other regulations existing as of the Effective Date, including the Zoning District (the

“**Regulations**”) that govern the use or installation of a building product or material in the construction, renovation, maintenance, or other alteration of a residential or commercial building on the Property, regardless of whether a different building product or material is approved for use by a national model code published within the last three code cycles that applies to the construction, renovation, maintenance, or other alteration of the building. In addition, Company voluntarily consents to the application of the Regulations that establish a standard for a building product, material, or aesthetic method in construction, renovation, maintenance, or other alteration of a residential or commercial building, regardless of whether the standard is more stringent than a standard for the product, material, or aesthetic method under a national model code published within the last three code cycles that applies to the construction, renovation, maintenance, or other alteration of the building. The parties agree that: (a) City will not issue any permits for the Property in violation of this section; (b) the covenants contained within this section constitute a material term of this Agreement; (c) Company’s voluntary consent to the application of the Regulations to the Property, as described in this section, constitutes a material inducement for City and MEDC to authorize the payments to Company described herein; (d) the covenants contained herein shall run with the land and shall bind Company and all successors and assigns; and (e) this section shall survive termination or expiration of this Agreement.

3.3 Commencement of Construction. Company must achieve Commencement of Construction for Phase 1 no later than March 31, 2025; provided, however, the City Council may extend, in its sole discretion, such date one time for up to one hundred eighty (180) days in the event Company is diligently pursuing the platting, permitting and development of Phase 1.

3.4 Phase 1 Building Final. No later than December 30, 2026 Company must receive a Building Final for Phase 1; provided, however, City Manager may extend, in his or her sole discretion, such date one time for up to one hundred eighty (180) days in the event Company is diligently pursuing the construction of Phase 1. If Company has satisfied all requirements for issuance of Building Final for Phase 1, but such Building Final has not been issued due to delays or other acts of the City that are not the fault of Company, then in such case, Company will be deemed to have achieved Building Final for Phase 1 for all purposes under this Agreement (including without limitation, for purposes of Section 6.1(c) below as well).

3.5 Phase 1A Tenant Finish Out. No later than April 31, 2027, tenant finish-out Certificates of Occupancy must be granted for a minimum of 15,000 square feet of leasable space within Phase 1 of the Project. If Company has satisfied all requirements for issuance of Certificates of Occupancy for at least 15,000 square feet of leasable space within Phase 1, but such Certificates of Occupancy have not been issued due to delays or other acts of the City that are not the fault of Company, then in such case, Company will be deemed to have satisfied the requirement of this Section 3.5 for all purposes under this Agreement (including without limitation, for purposes of Section 6.1(d) below as well).

3.6 Phase 2 Commencement. No later than July 31, 2027, Company must achieve Commencement of Construction for Phase 2.

3.7 Property Maintenance.



(a) Company agrees to create a property owner's association, or other appropriate entity ("**Association**"), to assume and be responsible for the continuous and perpetual operation, maintenance, and supervision of structures, parks, landscaping systems or landscape elements or features, landscape irrigation systems, screening walls, living screens, buffering systems, entryway features, including monuments or other signage, or other physical facilities or grounds held in common and necessary or desirable for the welfare of the Property, or that are of common use or benefit and that are not or cannot be satisfactorily maintained by City. A copy of the agreements, covenants and restrictions establishing and creating the Association must be approved by the city attorney and City Council prior to the approval of the record plat of the subdivision for the Property and must be filed of record with such record plat in the map and plat records of the county.

(b) At a minimum, the agreements, covenants, and restrictions establishing and creating the Association must contain or provide for the following:

(1) Definitions of terms contained therein;

(2) Provisions acceptable to City for the establishment and organization of the Association and the adoption of bylaws for such Association, including provisions requiring that the owner of any lot within the applicable subdivision and any successive buyer shall automatically and mandatorily become a member of the Association. Company shall have the right (but not the obligation) to be the sole controlling member of the Association during such periods that Company owns any portion of the Property;

(3) The initial term of the agreements, covenants, and restrictions establishing and creating the Association shall be for a 25-year period and shall automatically renew for successive ten-year periods, and the Association may not be dissolved without the prior written consent of City;

(4) Provisions acceptable to City to ensure the continuous and perpetual use, operation, maintenance, and/or supervision of all facilities, structures, improvements, systems, areas, or grounds that are the responsibility of the Association and which may establish a reserve fund for such purposes;

(5) Provisions prohibiting the amendment of any portion of the Association's agreements, covenants, or restrictions pertaining to the use, operation, maintenance, and/or supervision of any facilities, structures, improvements, systems, areas, or grounds that are the responsibility of the Association without the prior written consent of City;

(6) The right and ability of City or its lawful agents, after due notice to the Association, to perform the responsibilities of the Association if the Association fails to do so in compliance with any provisions of the agreements, covenants, or restrictions of the Association or of any applicable City codes or regulations; to assess the Association for all costs incurred by City in performing such

responsibilities if the Association fails to do so; and/or to avail itself of any other enforcement actions available to City pursuant to state law or City codes or regulations; and

(7) Provisions indemnifying and holding City harmless from any and all costs, expenses, suits, demands, liabilities, or damages, including attorney's fees and costs of suit, incurred or resulting from City's performance of the operation, Maintenance, or supervision responsibilities of the Association due to the Association's failure to perform such responsibilities, except for the negligence or willful misconduct of City.

3.8 Capital Investment and Jobs. The minimum Capital Investment for Phase 1 of the Project shall be \$25,000,000.00 as of the date Phase 1 of the Project receives a Building Final. Company shall, within thirty (30) days after receiving a Building Final of Phase 1 of the Project, deliver to Director copies of invoices, bills, receipts, and such other information as may be reasonably requested by City to document compliance with the required Capital Investment for Phase 1 of the Project. A minimum of fifty (50) people shall be employed in the construction of the Phase 1 of the Project.

#### **ARTICLE 4 MEDC GRANTS**

4.1 MEDC Grants.

(a) Within thirty (30) days of Commencement of Construction for Phase 1 of the Project and Director's receipt of a Payment Request, MEDC will pay Company an MEDC Grant in the amount of \$4,000,000.

(b) Within thirty (30) days of the Building Final for Phase 1 of the Project and Director's receipt of a Payment Request, MEDC will pay Company an MEDC Grant in the amount of \$1,500,000.

(c) Within thirty (30) days of a tenant finish-out Certificates of Occupancy being granted for a minimum of 15,000 square feet of leasable space within Phase 1 and Director's receipt of a Payment Request, MEDC will pay Company an MEDC Grant in the amount of \$500,000.

4.2 Maximum Public Infrastructure Amount. The MEDC Grants paid to Company in accordance with this Article may not exceed the Maximum Public Infrastructure Amount.

4.3 Proof of MEDC Grants. The MEDC agrees to maintain a separate account containing an amount equal to the outstanding balance of the Maximum Public Infrastructure Amount at all times during the Term of this Agreement. Within thirty (30) days of written request by Company, MEDC shall deliver to Company reasonable evidence of compliance with this provision.

#### **ARTICLE 5**



## LEASE GAP

5.1 Purpose. The parties acknowledge that Company will lease out Phase 1 and Phase 2 of the Project at market rental rates, which may be less than the rates necessary to pay off the loan Company obtained for construction of the Project. MEDC agrees to pay an annual fixed amount of \$1,500,000 for seven (7) years, beginning with the first year when Building Final is achieved by Company (the "**Lease Gap**"). The Rental Gap payments will be made in accordance with this Article.

5.2 Lease Gap Payments. MEDC agrees to make payments to Company in amount equal to the Lease Gap.

## ARTICLE 6 TERMINATION, OFFSET, AND REPAYMENT

6.1 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 City or MEDC, if Company fails to achieve Commencement of Construction for Phase I in accordance with Section 3.3 of this Agreement;
- (c) upon written notice by City or MEDC, if Company fails to achieve a Building Final for Phase 1 in accordance with Section 3.4 of this Agreement;
- (d) upon written notice by City or MEDC, if Company fails to achieve tenant finish-out Certificates of Occupancy in accordance with Section 3.5 of this Agreement;
- (e) upon written notice by City or MEDC, if Company fails to achieve Commencement of Construction for Phase 2 in accordance with Section 3.6 of this Agreement;
- (f) upon written notice by City or MEDC, if Company fails to make the minimum Capital Investment for Phase 1 in accordance with Section 3.8 of this Agreement;
- (g) upon written notice by any party, if another party defaults or breaches any of the other terms or conditions of this Agreement and such default or breach is not cured within sixty (60) days after written notice thereof;
- (h) upon written notice by City or MEDC, if Company suffers an Event of Bankruptcy or Insolvency and such filing is not dismissed or withdrawn within ninety (90) days after the filing thereof;
- (i) upon written notice by City or MEDC, if any Impositions owed to City become delinquent and such delinquency has not been cured within ninety (90) days after written notice thereof; or
- (j) upon written notice by any party if any subsequent federal or state legislation or

any decision of a court of competent jurisdiction renders this Agreement invalid, illegal, or unenforceable.

6.2 Offset. MEDC 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, regardless of whether or not the debt due to City has been reduced to judgment by a court.

6.3 Repayment. In the event that any of the following events occur, Company shall immediately refund to MEDC an amount equal to the amount of the MEDC Grants that have been provided by MEDC to Company prior to that date, 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 MEDC) as its prime or base commercial lending rate, which shall accrue from the Effective Date until paid. The following events shall trigger Company's repayment obligation under this paragraph:

- (a) company fails to meet any of the performance deadlines set forth in paragraphs 3.3, 3.4, 3.5 or 3.6 of this Agreement, and this Agreement is terminated by City or MEDC;
- (b) company fails to meet the minimum Capital Investment for Phase 1 of the Project set forth in paragraph 3.8 of this Agreement, and this Agreement is terminated by City or MEDC; or
- (c) this Agreement is terminated by City or MEDC pursuant to Paragraph 6.1(b)-(j) of this Agreement.

#### ARTICLE 7 INDEMNIFICATION

**CITY AND MEDC SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM THE ACTS OR OMISSIONS OF THE COMPANY, ITS OFFICERS, DIRECTORS, SERVANTS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, SUB-CONTRACTORS, LICENSEES, SUCCESSORS OR PERMITTED ASSIGNS PURSUANT TO THIS AGREEMENT. COMPANY HEREBY WAIVES ALL CLAIMS AGAINST CITY, MEDC, THEIR COUNCIL, DIRECTORS, OFFICERS, AGENTS, AND EMPLOYEES (COLLECTIVELY REFERRED TO AS THE "CITY REPRESENTATIVES") FOR DAMAGE TO ANY PROPERTY OR INJURY TO, OR DEATH OF, ANY PERSON ARISING AT ANY TIME AND FROM ANY CAUSE (OTHER THAN THE SOLE NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL ACT OF THE CITY REPRESENTATIVES) ARISING FROM THE ACTS OR OMISSIONS OF THE COMPANY, ITS OFFICERS, DIRECTORS, SERVANTS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, SUB-CONTRACTORS LICENSEES, SUCCESSORS OR PERMITTED ASSIGNS PURSUANT TO THIS AGREEMENT.**



COMPANY DOES HEREBY INDEMNIFY AND SAVE HARMLESS THE CITY REPRESENTATIVES FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, SUITS, COSTS (INCLUDING COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION) AND ACTIONS OF ANY KIND BY REASON OF INJURY TO OR DEATH OF ANY PERSON, OR DAMAGE TO OR LOSS OF PROPERTY ARISING FROM COMPANY'S BREACH OF ANY OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, OR BY REASON OF ANY ACT OR OMISSION ON THE PART OF COMPANY, ITS OFFICERS, DIRECTORS, SERVANTS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, SUB-CONTRACTOR(S), LICENSEES, SUCCESSORS OR PERMITTED ASSIGNS IN THE PERFORMANCE OF THIS AGREEMENT (EXCEPT WHEN SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES, DEATHS OR DAMAGES ARISE FROM OR ARE ATTRIBUTED TO THE SOLE NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL ACT OF THE CITY REPRESENTATIVES). NOTWITHSTANDING THE FOREGOING IN THE EVENT OF JOINT OR CONCURRENT NEGLIGENCE OF BOTH THE CITY REPRESENTATIVES AND COMPANY, THE RESPONSIBILITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY REPRESENTATIVES AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS SECTION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND THEIR RESPECTIVE SUCCESSORS AND PERMITTED ASSIGNS AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. THE COMPANY'S OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY COMPANY UNDER THIS AGREEMENT. NOTWITHSTANDING THE FOREGOING, THE RELEASES AND INDEMNIFICATIONS CONTAINED HEREIN SHALL NOT EXTEND TO THE NEGLIGENCE OR WILLFUL MISCONDUCT OF CITY OR MEDC OR THEIR RESPECTIVE EMPLOYEES, AGENTS OR CONTRACTORS. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

#### ARTICLE 8 ACCESS TO INFORMATION

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

#### ARTICLE 9 GENERAL PROVISIONS

9.1 Mutual Assistance. The parties 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.

9.2 Representations and Warranties. Company represents and warrants to MEDC that it has the requisite authority to enter into this Agreement. Company represents and warrants to MEDC



that it will not violate any federal, state, or local laws in constructing or operating the Project, and that the Project and Public Infrastructure shall conform to the applicable building codes, zoning ordinances, and all other ordinances and regulations of City.

9.3 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.

9.4 Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the transaction contemplated herein.

9.5 Amendment. This Agreement may only be amended, altered, or revoked by written instrument signed by the parties.

9.6 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 their rights and obligations hereunder only upon prior written approval of City and MEDC; provided, however, Company shall not be required to obtain City or MEDC's consent to an assignment of this Agreement to an Affiliate of Company.

(b) Collateral Assignment. Notwithstanding Section 11.6(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 Project and Public Infrastructure, all rights, title, and interests of Company to receive the MEDC Grants or other payments under this Agreement. Such collateral assignments: (i) shall require the prior written consent of City and MEDC, which shall not be unreasonably delayed or withheld, and City and MEDC agree to execute such reasonable consent forms as may be required to evidence such consent; (ii) shall require notice to City and MEDC 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; (iv) may give lenders the right, but not the obligation, to cure any failure of Company to perform under this Agreement; and (v) MEDC agrees to subordinate its lien on the Property (if any) to any such third-party financing in accordance and consistent with the terms of the contract of sale and related deed of trust. No collateral assignment may relieve Company from any obligations or liabilities under this Agreement. Director has the authority to give the written consent under this subsection after review and consultation with City and MEDC's legal counsel; provided, however, Director may, in his or her sole discretion, present the assignment request to the City Council and MEDC's board of directors for approval.

9.7 Notice. Any notices or other communications required or permitted by this Agreement shall be in writing and delivered personally, or by messenger or a nationally recognized overnight



courier service, or alternatively, shall be sent by United States certified mail, return receipt requested. The effective date of any notice shall be (i) if by personal delivery, messenger or courier service, the date of delivery of the notice, or (ii) if mailed, on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as undeliverable, as the case may be. The parties hereby designate the addresses set forth below as their respective notice addresses under this Agreement.

COMPANY: 6.44 Holdings, LLC  
2 Essex Ct.  
Heath, Texas 75032  
Attn: Brian Berry

With a copy to: Liechty McGinnis Berryman & Bowen, LLP  
11910 Greenville Avenue, Suite 400  
Dallas, Texas 75243  
Attention: Nathan Entsminger, Esq.

MEDC: Mansfield Economic Development  
301 South Main Street  
Mansfield, Texas 76063  
Attn: Director

With a copy to: Mansfield Economic Development Attorney  
Taylor, Olson, Adkins, Sralla & Elam, LLP  
6000 Western Place, Suite 200  
Fort Worth, Texas 76107

City: City of Mansfield, Texas  
Attn: City Manager  
1200 E. Broad Street  
Mansfield, Texas 76063

9.8 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.

9.9 Applicable Law/Venue. The substantive laws of the State of Texas (and not its conflicts of law principles) govern all matters arising out of, or relating to, this Agreement and all of the transactions it contemplates, including without limitation its validity, interpretation, construction, performance and enforcement. Mandatory and exclusive venue for any action arising out of, or relating to, this Agreement must be in a court of competent jurisdiction in Tarrant County, Texas.

9.10 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.

9.11 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.

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

9.13 Force Majeure. If any 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 Force Majeure, 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 any party under this Agreement.

9.14 Non-Waiver. Any failure by a Party to insist upon strict performance by another Party of any material provision of this Agreement shall not be deemed a waiver thereof, and the Party shall have the right at any time thereafter to insist upon strict performance of any and all provisions of this Agreement. No provision of this Agreement may be waived except by writing signed by the Party waiving such provision. Any waiver shall be limited to the specific purposes for which it is given. No waiver by any Party of any term or condition of this Agreement shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.

9.15 Attorney's Fees. If either party employs an attorney or attorneys to enforce any of the provisions hereof, or to recover damages for the breach of this Agreement, the non-prevailing party in any final judgment or award agrees to pay the other party all reasonable costs, charges and expenses, including reasonable attorneys' fees and costs of court, expended or incurred in connection therewith.

9.16 Limitation of Liability. The parties further agree that no party will be liable to any other party under this Agreement for special, consequential (including lost profits), or exemplary damages.

9.17 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 City and MEDC the full amount of all payments made under 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 City or MEDC.



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

9.19 Full Execution Required. This Agreement will not be binding on any party unless fully executed by all parties.

9.20 Consent Standard. Except as otherwise specifically provided, whenever consent or approval of Company, City, or MEDC is required under the terms of this Agreement, such consent or approval shall not be unreasonably withheld, conditioned or delayed.

[Signatures on following page]



**MANSFIELD ECONOMIC DEVELOPMENT CORPORATION,**  
a Texas non-profit corporation

By: 

Name: DAVID Godin

Title: Board President

Date: 11/7/2023

ATTEST:

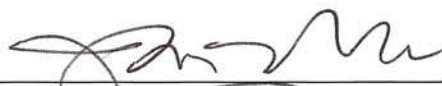
  
Board Secretary

**6.44 HOLDINGS, LLC,**  
a Texas limited liability company

By: \_\_\_\_\_  
Brian P. Berry, President

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

**CITY OF MANSFIELD, TEXAS,**  
a Texas home rule municipal corporation

  
City Manager or designee Jason Mowse

Date: 11-7-23

ATTEST:

  
Susana Marin, City Secretary



**MANSFIELD ECONOMIC DEVELOPMENT CORPORATION,**  
a Texas non-profit corporation

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

Name: \_\_\_\_\_

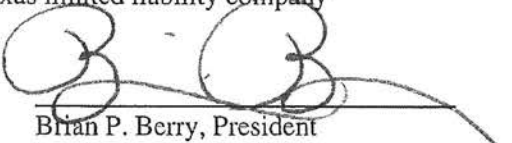
Title: \_\_\_\_\_

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

ATTEST:

Board Secretary

**6.44 HOLDINGS, LLC,**  
a Texas limited liability company

By:   
Brian P. Berry, President

Date: 11.08.2023

**CITY OF MANSFIELD, TEXAS,**  
a Texas home rule municipal corporation

\_\_\_\_\_  
City Manager or designee

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

ATTEST:

\_\_\_\_\_  
Susana Marin, City Secretary

SM

## EXHIBIT "A"

### The Property

BEING A 6.44 ACRE TRACT OF LAND SITUATE IN THE JOHN ROBERTSON SURVEY, ABSTRACT NUMBER 1317, TARRANT COUNTY, TEXAS AND THE DANIEL DELAY SURVEY, ABSTRACT NUMBER 421, TARRANT COUNTY, TEXAS AND BEING THAT SAME CALLED 6.44 ACRE TRACT CONVEYED TO TONORE-TYLER MANAGEMENT, LLC UNDER INSTRUMENT NUMBER D207237971 OF THE OFFICAL PUBLIC RECORDS OF TARRANT COUNTY, TEXAS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A 1" IRON ROD FOUND IN THE WEST LINE OF U.S. HIGHWAY 287 (A VARIABLE WIDTH RIGHT-OF-WAY) FOR THE NORTHEAST CORNER OF SAID 6.44 ACRE TRACT, ALSO BEING THE SOUTHEAST CORNER OF A TRACT CONVEYED TO H2 HOSPITALITY LLC UNDER INSTRUMENT NUMBER D218163867 OF THE OFFICIAL PUBLIC RECORDS OF TARRANT COUNTY, TEXAS, FROM WHICH A 5/8" IRON ROD FOUND BEARS N 21°40'42" W, A DISTANCE OF 65.40 FEET. SAID 1" IRON ROD FOUND FURTHER REFERRED TO AS THE POINT OF BEGINNING, HAVING A TEXAS COORDINATE SYSTEM OF 1983, NORTH CENTRAL ZONE, U.S. SURVEY FOOT, GRID COORDINATE VALUE OF N:6887034.19, E:2396316.10 FEET FOR REFERENCE;

THENCE FROM SAID POINT OF BEGINNING, WITH THE WEST LINE OF U.S. HIGHWAY 287, S 21°28'25" E, A DISTANCE OF 477.37 FEET TO A 1" IRON ROD FOUND FOR THE SOUTHEAST CORNER OF SAID 6.44 ACRE TRACT, ALSO BEING THE NORTHEAST CORNER OF A TRACT CONVEYED TO JCI STETSON INVESTMENTS LTD UNDER INSTRUMENT NUMBER D204213112 OF THE OFFICIAL PUBLIC RECORDS OF TARRANT COUNTY, TEXAS;  
THENCE, DEPARTING THE WEST LINE OF U.S. HIGHWAY 287, S 59°56'20"W , A DISTANCE OF 571.41 FEET TO A 1/2" IRON ROD FOUND FOR THE SOUTHWEST CORNER OF SAID 6.44 ACRE TRACT, ALSO BEING THE NORTHWEST CORNER OF SAID JCI STETSON INVESTMENTS LTD TRACT AND AN ANGLE POINT IN THE EAST LINE OF LOT 29, BLOCK 7 OF REMINGTON RANCH, PHASE TWO RECORDED UNDER INSTRUMENT NUMBER D204001090 OF THE PLAT RECORDS OF TARRANT COUNTY, TEXAS;

THENCE, N 26°54'38" W, A DISTANCE OF 258.01 FEET TO A 1/2" IRON ROD FOUND FOR AN ANGLE POINT IN THE WEST LINE OF SAID 6.44 ACRE TRACT, ALSO BEING THE NORTHEAST CORNER OF SAID LOT 29 AND THE MOST SOUTHERLY SOUTHEAST CORNER OF A SAID H2 HOSPITALITY LLC TRACT;

THENCE, N 27°15'27" W, A DISTANCE OF 214.67 FEET TO A 5/8" IRON ROD FOUND FOR THE NORTHWEST CORNER OF SAID 6.44 ACRE TRACT, ALSO BEING AN ELL CORNER OF SAID H2 HOSPITALITY LLC TRACT, FROM WHICH A 1/2" IRON ROD WITH A CAP STAMPED "GRANT ENG RPLS 4151 FOUND BEARS N 27°15'27" W, A DISTANCE OF 509.88 FEET;

THENCE, N 59°56'24" E, A DISTANCE OF 618.01 FEET TO THE POINT OF BEGINNING, CONTAINING 6.44 ACRES OR 280,552 SQ. FEET OF LAND, MORE OR LESS