

## AGREEMENT

THE STATE OF TEXAS                    §  
  §       KNOW ALL MEN BY THESE PRESENTS:  
COUNTY OF HARRIS                   §

This Agreement (the “Agreement”) is made and entered into by and between the **Tomball Economic Development Corporation**, an industrial development corporation created pursuant to the Development Corporation Act, now Chapter 501 et seq of the Texas Local Government Code, located in Harris County, Texas (the “TEDC”), and **Houston Poly Bag I, Ltd.** (the “Company”), 11726 Holderrieth Road, Tomball, Texas 77375.

### WITNESSETH:

**WHEREAS**, it is the established policy of the TEDC to adopt such reasonable measures from time-to-time as are permitted by law to endeavor to attract industry, create and retain primary jobs, expand the growth of the City of Tomball (the “City”), and thereby enhance the economic stability and growth of the City; and

**WHEREAS**, the Company owns a 5-acre tract of land within the City, located at 11726 Holderrieth Road, Tomball, Texas 77375 (the “Property”), and more particularly described in Exhibit “A,” attached hereto and made a part hereof; and

**WHEREAS**, the Company plans to expand its current operations at the Property, and as part of the process, plans to expend a minimum of Six Million Dollars (\$6,000,000,) to construct a 41,000 square foot building addition and make other capital improvements (the “Improvements”) more particularly described in Exhibit “B” attached hereto and made a part hereof; and

**WHEREAS**, the Company also proposes to maintain the current seventy-one (71) jobs at the Property and create ten (10) new employment positions in conjunction with the expansion of its business operations at the Property; and

**WHEREAS**, the TEDC agrees to provide to the Company the sum of Eighty-Four Thousand, Eight Hundred Ninety-Four Dollars (\$84,894.00) to assist in the construction of the Improvements, the retention of seventy-one (71) full-time jobs, and the addition of the ten (10) new full-time jobs at the Property; and

**WHEREAS**, the Company has agreed, in exchange and as consideration for the funding, to satisfy and comply with certain terms and conditions; and

**WHEREAS**, this expenditure is found by the Board of Directors of the TEDC to be required or suitable for the promotion and development of new or expanded business enterprises at the Property; and

**NOW, THEREFORE**, in consideration of the premises and the mutual benefits and obligations set forth herein, including the recitals set forth above, the TEDC and the Company agree as follows:

1.

The Company covenants and agrees that it will construct the Improvements and operate and maintain the proposed business on the property for a term of at least five (5) years, and will for such term, except as provided by paragraph 4 hereof, maintain seventy-one (71) employees and create ten (10) new jobs on the Property.

2.

The Company also covenants and agrees that construction of the Improvements, the addition of the ten (10) new employees, and obtaining all necessary occupancy permits from the

City shall occur within twenty-four (24) months from the Effective Date of this Agreement. Extensions of these deadlines, due to any extenuating circumstance or uncontrollable delay, may be granted at the sole discretion of the Board of Directors of the TEDC.

3.

The Company further covenants and agrees that it does not and will not knowingly employ an undocumented worker. An “undocumented worker” shall mean an individual who, at the time of employment, is not (a) lawfully admitted for permanent residence to the United States; or (b) authorized by law to be employed in that manner in the United States.

4.

In consideration of the Company's representations, promises, and covenants, TEDC agrees to grant to the Company the sum of Eighty-Four Thousand, Eight Hundred Ninety-Four Dollars (\$84,894.00) to fund a portion of the cost of the Improvements, the retention of seventy-one (71) full-time jobs, and the addition of the ten (10) new employees to the Company's business operations on the property. The TEDC agrees to distribute such funds to the Company within thirty (30) days of receipt of a letter from the Company requesting such payment, which letter shall also include: (a) a copy of the City's occupancy permit for the Improvements to the Property; (b) proof that the Company has retained and added the number of employees indicated above to its business operations on the Property, as evidenced by copies of Texas Workforce Commission form C-3 or Internal Revenue Service Form 941; (c) verification from the City acknowledging that all necessary plats, plans, and specifications have been received, reviewed, and approved; (d) certification that the Improvements have been constructed in accordance with the approved plans and specifications; and, (e) an affidavit stating that all contractors and subcontractors providing work and/or materials in the construction of the Improvements have

been paid and any and all liens and claims regarding such work have been released. In the event the number of jobs originally projected is not met, the amount of the funding provided to the Company by the TEDC will be reduced on a pro rata basis to reflect the actual number of jobs at the time of the request for disbursement of funds.

5.

It is understood and agreed by the parties that, in the event of a default by the Company on any of its obligations under this Agreement, the Company shall reimburse the TEDC the full amount paid to the Company by the TEDC, with interest at the rate equal to the 90-day Treasury Bill plus ½% per annum, within 120 days after the TEDC notifies the Company of the default. It is further understood and agreed by the parties that if the Company is convicted of a violation under 8 U.S.C. Section 1324a(f), the Company will reimburse the TEDC the full amount paid to the Company, with interest at the rate equal to the 90-day Treasury Bill plus ½% per annum, within 120 days after the TEDC notifies the Company of the violation.

The Company shall also reimburse the TEDC for any and all reasonable attorney's fees and costs incurred by the TEDC as a result of any action required to obtain reimbursement of such funds. Such reimbursement shall be due and payable thirty (30) days after the Company receives written notice of default accompanied by copies of all applicable invoices.

It is understood and agreed by the parties that, in the event of a default by the TEDC on any of its obligations under this Agreement, the Company's sole and exclusive remedy shall be limited to either a) the termination of this Agreement or b) a suit for specific performance.

6.

Personal Liability of Public Officials: To the extent permitted by law, no director, officer, employee or agent of the TEDC, and no officer, employee or agent of the City of

Tomball, shall be personally responsible for any liability arising under or growing out of this Agreement.

7.

This Agreement shall inure to the benefit of and be binding upon the TEDC and the Company, and upon the Company's successors and assigns, affiliates, and subsidiaries, and shall remain in force whether the Company sells, assigns, or in any other manner disposes of, either voluntarily or by operation of law, all or any part of the Property and the agreements herein contained shall be held to be covenants running with the Property for so long as this Agreement, or any extension thereof, remains in effect.

8.

Any notice provided or permitted to be given under this Agreement must be in writing and may be served by (i) depositing the same in the United States mail, addressed to the party to be notified, postage prepaid, registered or certified mail, return receipt requested; or (ii) by delivering the same in person to such party; or (iii) by overnight or messenger delivery service that retains regular records of delivery and receipt; or (iv) by facsimile; provided a copy of such notice is sent within one (1) day thereafter by another method provided above. The initial addresses of the parties for the purpose of notice under this Agreement shall be as follows:

If to City: Tomball Economic Development Corporation  
401 W. Market Street  
Tomball, Texas 77375  
Attn: President, Board of Directors

If to Company: Houston Poly Bag I, Ltd.  
11726 Holderrieth Road,  
Tomball, Texas 77375  
Attn: William E. Sumner, III, General Manager

9.

This Agreement shall be performable and enforceable in Harris County, Texas, and shall be construed in accordance with the laws of the State of Texas.

10.

Except as otherwise provided in this Agreement, this Agreement shall be subject to change, amendment or modification only in writing, and by the signatures and mutual consent of the parties hereto.

11.

The failure of any party to insist in any one or more instances on the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, or condition, or right with respect to further performance.

12.

This Agreement shall bind and benefit the respective Parties and their legal successors and shall not be assignable, in whole or in part, by any party without first obtaining written consent of the other party.

13.

In the event any one or more words, phrases, clauses, sentences, paragraphs, sections, or other parts of this Agreement, or the application thereof to any person, firm, corporation, or circumstance, shall be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, then the application, invalidity or unconstitutionality of such words, phrases, clauses, sentences, paragraphs, sections, or other parts of this Agreement shall be deemed to be independent of and severable from the remainder of this Agreement, and the validity of the remaining parts of this Agreement shall not be affected thereby.

IN TESTIMONY OF WHICH, THIS AGREEMENT has been executed by the parties on this \_\_\_\_\_ day of \_\_\_\_\_ 2020 (the “Effective Date”).

**HOUSTON POLY BAG I, LTD**

By: \_\_\_\_\_  
Name: William E. Sumner III  
Title: General Manager

ATTEST:

By: \_\_\_\_\_  
Name: Tiffani Wooten  
Title: Assistant Director

**TOMBALL ECONOMIC DEVELOPMENT CORPORATION**

By: \_\_\_\_\_  
Name: Gretchen Fagan  
Title: President, Board of Directors

ATTEST:

By: \_\_\_\_\_  
Name: Steven Vaughan  
Title: Vice President, Board of Directors

**ACKNOWLEDGMENT**

THE STATE OF TEXAS    §  
  §  
COUNTY OF HARRIS    §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_ 2020, by William E. Sumner, III, General Manager of Houston Poly Bag I, Ltd. for and on behalf of said company.

\_\_\_\_\_  
Notary Public in and for the State of Texas

My Commission Expires: \_\_\_\_\_

(SEAL)

**ACKNOWLEDGMENT**

THE STATE OF TEXAS    §  
  §  
COUNTY OF HARRIS    §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_ 2020, by \_\_\_\_\_, President of the Board of Directors of the Tomball Economic Development Corporation, for and on behalf of said Corporation.

\_\_\_\_\_  
Notary Public in and for the State of Texas

My Commission Expires: \_\_\_\_\_

(SEAL)



**Exhibit "A"**

**Legal Description of Property**

HOUSTON POLY BAG PLAT, BEING A 5 ACRE TRACT IN THE C.N. PILLOT SURVEY,  
ABSTRACT NO. 632, IN TOMBALL, HARRIS COUNTY, TEXAS, RECORDED IN VOL. 335,  
PG. 108.

**Exhibit "A"**

**Description of Improvements**

Constructing a 41,000 sq. ft. building addition, adding 5 multi-layered extrusion machines, and increasing its office space from 2,200 square feet to 6,600 square feet.