

ECONOMIC DEVELOPMENT AGREEMENT

By and Among

CITY OF EDINBURG, TEXAS,

HIDALGO COUNTY, TEXAS,

EDINBURG ECONOMIC DEVELOPMENT CORPORATION,

CITY OF EDINBURG, TEXAS LOCAL GOVERNMENT CORPORATION,

and

FIRST HARTFORD REALTY CORPORATION

Effective as of _____ __, 2007

TABLE OF CONTENTS

Recitals

**ARTICLE I
PURPOSE AND INTERPRETATION**

Section 1.1. Objectives
Section 1.2. Concept and Structure
Section 1.3. Interpretation
Section 1.4. Accounting Terms
Section 1.5. Legal Representation of the Parties

**ARTICLE II
DEFINITIONS**

Definitions

**ARTICLE III
DEVELOPMENT AND OPERATION OF THE FACILITY**

Section 3.1. Overview
Section 3.2. Public Infrastructure
Section 3.3. Projected Budget
Section 3.3.1. Facility Costs
Section 3.3.2. Public Infrastructure Costs and Other Facility Costs
Section 3.4. Development and Construction Remedies
Section 3.4.1. Developer's Responsibilities
Section 3.4.2. Compliance with Law by Developer
Section 3.4.3. Design and Construction of the Facility
Section 3.4.4. Obligations Specific to the Public Infrastructure
Section 3.4.5. Review by LGC
Section 3.4.6. Insurance Requirements
Section 3.4.7. Release and Waiver
Section 3.4.8. Indemnity
Section 3.5. Conveyance of Public Infrastructure

**ARTICLE IV
TIF ZONE FORMATION**

Section 4.1. TIF Zone Formation
Section 4.2. TIF Term and Use of TIF Revenues

ARTICLE V
FINANCING AND DEVELOPER REIMBURSEMENTS

Section 5.1. Cost of Construction; Potential Reimbursements

Section 5.2. Separate Obligations of the Developer

Section 5.3. Public Infrastructure Bonds

Section 5.3.1. Issuance of Public Infrastructure Bonds

Section 5.3.2. General Issuance Provisions

Section 5.3.3. Conditions to the Obligations of the LGC to Issue
Public Infrastructure Bonds

Section 5.4. City's Chapter 380 Reimbursement

Section 5.4.1. City's 1% Sales Tax and City's 1% Sales Tax Revenues

Section 5.4.2. Payment of City's Chapter 380 Grant Reimbursement

Section 5.4.3. Limitation of Source of Payment

Section 5.4.4. Audits of City Records

Section 5.5. EEDC Grants

Section 5.5.1. EEDC Sales Tax and EEDC Sales Tax Revenues

Section 5.5.2. EEDC Initial Commitment

Section 5.5.3. EEDC Incentive Commitment

Section 5.5.4. Audits of EEDC Records

Section 5.6. Submission of Texas Enterprise Zone Program Application

Section 5.7. Cooperation of Parties to Determine Sales Taxes Collected
Within the TIF Zone

Section 5.8. Right to Offset Certain Initial Local Reimbursements and
EEDC's Incentive Commitment with Other Sources of Funds

ARTICLE VI
OTHER DEVELOPER OBLIGATIONS

Section 6.1. Completion of the Facility

Section 6.2. Adjustments for Delay

Section 6.3. Audits of Developer Records

ARTICLE VII
OTHER CITY, COUNTY, AND LGC OBLIGATIONS

Section 7.1. Fast-Track Development Approvals

ARTICLE VIII
TERMINATION

Section 8.1. Termination

Section 8.2. Termination Date

Section 8.3. Notice of Problems

Section 8.4. City, County, EEDC and LGC Termination Procedure

Section 8.5.	Developer's Termination Procedure
Section 8.6.	Effect of Termination

ARTICLE IX
COVENANTS

Section 9.1.	Covenants of Developer
Section 9.1.1.	Compliance Certificate
Section 9.1.2.	Operation of Facility
Section 9.1.3.	Business of the Developer
Section 9.1.4.	Compliance with Laws
Section 9.1.5.	Inspection of Books and Records
Section 9.1.6.	Modification, Amendment or Termination of the Collateral Documents ..
Section 9.1.7.	Governmental Licenses
Section 9.2.	Covenants of the City, County, EEDC and LGC
Section 9.2.1.	Organization
Section 9.2.2.	Pledge of Pledged Revenues
Section 9.2.3.	Funding of EEDC Grants
Section 9.3.	Further Actions

ARTICLE X
REPRESENTATIONS AND WARRANTIES

Section 10.1.	Representations and Warranties of Developer
Section 10.1.1.	Organization
Section 10.1.2.	Authority
Section 10.1.3.	No Conflicts
Section 10.1.4.	No Consents
Section 10.1.5.	Valid and Binding Obligation
Section 10.1.6.	No Pending Litigation
Section 10.1.7.	No Defaults
Section 10.1.8.	Full Disclosure
Section 10.1.9.	Necessary Consent
Section 10.1.10.	Environmental Condition; Indemnification
Section 10.2.	Representation and Warranties of the City, the EEDC, the County, and LGC
Section 10.2.1.	Authority
Section 10.2.2.	No Conflicts
Section 10.2.3.	Valid and Binding Obligation
Section 10.2.4.	No Pending Litigation
Section 10.2.5.	No Defaults

ARTICLE XI
INDEMNIFICATION AND INSURANCE

Section 11.1. Indemnity
Section 11.2. Indemnification Procedures

ARTICLE XII
MISCELLANEOUS

Section 12.1. Article, Section or Other Headings
Section 12.2. Entire Agreement
Section 12.3. Amendment
Section 12.4. Successors and Assigns
Section 12.5. Waiver
Section 12.6. Remedies
Section 12.7. Notices
Section 12.8. Applicable Law
Section 12.9. Severability
Section 12.10. No Third-Party Beneficiaries
Section 12.11. No Joint Venture
Section 12.12. Counterparts

SIGNATURES

EXHIBIT A Site
EXHIBIT B TIF Zone
EXHIBIT C Projected Budget
EXHIBIT D Construction Schedule
EXHIBIT E Description of Construction Phases
EXHIBIT F Description of Public Infrastructure
EXHIBIT G Exceptions to Environmental Conditions

ECONOMIC DEVELOPMENT AGREEMENT

This **ECONOMIC DEVELOPMENT AGREEMENT** (this "*Agreement*") is entered into to be effective as of the ____ day of _____, 2007 (the "*Effective Date*"), by and among the **CITY OF EDINBURG, TEXAS** (the "*City*"), a home-rule municipality organized under the laws of the State of Texas, **HIDALGO COUNTY, TEXAS** (the "*County*"), the **EDINBURG ECONOMIC DEVELOPMENT CORPORATION**, a non-profit corporation created by the City and organized pursuant to Section 4A of the Development Corporation Act of 1979, - Article 5190.6, V.A.T.C.S. (the "*EEDC*"), the **CITY OF EDINBURG, TEXAS LOCAL GOVERNMENT CORPORATION**, a non-profit corporation organized under Subchapter D of Chapter 431 of the Texas Transportation Code (the "*LGC*") and **FIRST HARTFORD REALTY CORPORATION**, a Delaware corporation (the "*Developer*").

RECITALS

WHEREAS, the Developer desires to construct a retail shopping center containing at least 800,000 square feet in multiple buildings (collectively, the "*Facility*") on the site described on *Exhibit A* attached hereto (the "*Site*"); and

WHEREAS, based on similar retail projects, the Developer estimates that the Facility could employ up to 1,300 people; and

WHEREAS, the Developer has advised the City and the County that a contributing factor that would induce the Developer to develop the Facility would be the creation of a tax increment reinvestment zone to defray a portion of the costs to be incurred by the Developer as a consequence of developing and constructing the Facility; and

WHEREAS, under the Tax Increment Financing Act, Chapter 311, Texas Tax Code, as amended (the "*TIF Act*"), the City has the power to designate a reinvestment zone to promote development or redevelopment of property within the jurisdiction of the City; and

WHEREAS, under the TIF Act, the City has the power to utilize tax increment (as defined in the TIF Act) within the reinvestment zone to finance and refinance public works and public improvement projects; and

WHEREAS, the City Council of the City and the Commissioners Court of the County each has found and determined that by entering into this Agreement, the construction and acquisition of the Public Infrastructure (as hereinafter defined) will further the public interest and welfare, and the potential economic benefits that will accrue to the City and the County, respectively, under the terms and conditions of this Agreement which are consistent with the City's and County's economic development objectives; and

WHEREAS, the City and the County have further determined that development of the property within the TIF Zone (as hereinafter defined) will not occur solely through private investment in the reasonably foreseeable future and the property is predominately open and, because

of obsolete platting, deterioration of structures or site improvements, or other factors, substantially impairs or arrests the sound growth of the City and the County; and

WHEREAS, under authority of Section 52-a of Article III of the Texas Constitution, the Texas Legislature enacted Chapter 380, Texas Local Government Code ("**Chapter 380**"), which provides that the governing body of a municipality may establish and provide for the administration of one or more programs, including programs for making loans and grants of public money and providing personnel and services of the municipality, to promote state or local economic development and to stimulate business and commercial activity in the municipality; and

WHEREAS, the City has taken all necessary legal action to adopt an economic development program in satisfaction of Chapter 380; and

WHEREAS, by the City Council's approval of this Agreement on behalf of the City, the City Council is affirming that the Facility qualifies under the City's economic development program established under Chapter 380, and the portion of this Agreement authorizing a Chapter 380 Grant is authorized pursuant to Section 380.001(a), Texas Local Government Code, as amended, and the City's Dedicated 1% Sales Tax Revenues (defined herein) granted to the Developer herein satisfy and comply in all respects with Section 380.001(b), Texas Local Government Code, as amended; and

WHEREAS, pursuant to the provisions of Section 4A of the Development Corporation Act of 1979, Article 5190.6, V.A.T.C.S., as amended (the "**Development Corporation Act**"), the City created the EEDC to act on behalf of the City to satisfy the public purposes set forth in Section 4A of the Act; and

WHEREAS, the City Council of the City called an election for the purpose of receiving authority to levy a sales and use tax for the benefit of the EEDC under authority of Section 4A of the Development Corporation Act; and

WHEREAS, at an election held on January 20, 1990, a majority of the citizens of the City voting at said election authorized the City to levy a sales and use tax on the receipts at retail of taxable items within the City at a rate of one-half of one percent to be used for improving and promoting industrial and economic development in accordance with Section 4A of the Development Corporation Act; and

WHEREAS, the Development Corporation Act authorizes the EEDC to finance "projects" which includes, among other things, "*expenditures found by the board of directors to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises limited to streets and roads, rail spurs, water and sewer utilities, electric utilities, gas utilities, drainage, site improvements, and related improvements....*"; and

WHEREAS, pursuant to Subchapter D of Chapter 431, Texas Transportation Code, as amended, the LGC is authorized to accomplish any governmental purpose of the City; and

WHEREAS, the City created the LGC for the purpose of assisting the City with financing and constructing economic development projects within the City in order to promote economic development and to stimulate business and commercial activity in the City, all at the request of the City Council of the City; and

WHEREAS, by the City Council's approval of this Agreement on behalf of the City, the City Council has evidenced its desire for the LGC to assist the City with financing and constructing the Facility, including the Public Infrastructure, in order to promote economic development and to stimulate business and commercial activity in the City; and

WHEREAS, the City, the County, the LGC, the EEDC and the Developer desire to set forth in this Agreement the terms and conditions of the construction, development, and financing of the Facility on the Site and the related Public Infrastructure; and

WHEREAS, the parties recognize that all agreements of the parties hereto and all terms and provisions hereof are subject to the laws of the State of Texas and all rules, regulations and interpretations of any agency or subdivision thereof at any time governing the subject matters hereof;

AGREEMENT

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

ARTICLE I

PURPOSE AND INTERPRETATION

SECTION 1.1 OBJECTIVES. The Developer is interested in developing a major retail project in the City, and has designated the Site as a potential location for such project. The City, the EEDC and the County believe that the development of the Facility at the Site will attract additional businesses, development, and investment in the City and the County. The City, the EEDC and the County recognize that development of the Facility at the Site will likely serve as an economic stimulus to this developing area, resulting in significant job growth and increased tax revenue for the City and the County. Consequently, the City and the County strongly favor the Developer's location of the Facility at the Site.

The parties acknowledge that the present infrastructure in the vicinity of the Site is underdeveloped and thus inefficient to support the anticipated development by the Developer. Following the development of the Facility at the Site, additional development by other businesses is anticipated to occur on the land surrounding the Site. The City shall form a Tax Increment Financing Reinvestment Zone, the boundaries of which will initially be established as depicted on

Exhibit B attached hereto (the "***TIF Zone***"). In order to encourage the Developer to locate the Facility at the Site and to make the area surrounding the Site more attractive to other businesses seeking to establish new facilities near the Site, the Developer has requested that the City, the EEDC and the County fund certain costs associated with the development of the Facility at the site as well as the related Public Infrastructure necessary to support the Site all as described in this Agreement.

SECTION 1.2 CONCEPT AND STRUCTURE. Development of the Facility will include the Public Infrastructure. Development of the Facility at the Site will result in increased property and sales tax revenues to the City, the EEDC, the County and other taxing units with jurisdiction at the Site. To accomplish the objectives listed above, the Developer will be responsible for the development and construction of the Facility at the Site and related Public Infrastructure. In return, (i) the LGC will reimburse the Developer for all or a portion of the costs of the Public Infrastructure from the issuance of Public Infrastructure Bonds (as defined herein) by the LGC, which Public Infrastructure Bonds shall be payable from TIF Revenues (as defined herein) which are generated in the TIF Zone, (ii) the City will reimburse the Developer for a portion of the costs of the Facility with a Chapter 380 Grant, and (iii) the EEDC will reimburse the Developer for a portion of the costs of the Facility with economic development grants (defined herein as "***EEDC Grants***"), all subject to the Developer's compliance with certain conditions. Subject to the terms of this Agreement, the City's, the County's, the LGC's and the EEDC's participation in financing the construction of Public Infrastructure and reimbursing the Developer for other Facility Costs will include the following components:

- (A) establishment of the TIF Zone in which the City and the County agree to participate (as more specifically described in Article IV hereof);
- (B) issuance by the LGC of Public Infrastructure Bonds secured by TIF Revenues for all or a portion of the costs of developing and constructing the Public Infrastructure, subject to the Developer's compliance with certain conditions (as more specifically described in Section 5.3 hereof);
- (C) the City's payments to reimburse the Developer for certain Facility Costs with a Chapter 380 Grant, subject to the Developer's compliance with certain conditions (as more specifically described in Section 5.4 hereof);
- (D) the EEDC's payments to reimburse the Developer for certain Facility Costs with EEDC Grants, subject to the Developer's compliance with certain conditions (as more specifically described in Section 5.5 hereof); and
- (E) the City's and the EEDC's commitment to prepare and submit documents to apply for economic development assistance if it is determined that the Project and the Developer are eligible to receive such assistance through the Texas Enterprise Zone Program (as more specifically described in Section 5.6 hereof).

SECTION 1.3 INTERPRETATION. In this Agreement, unless a clear contrary intention appears:

- (a) the singular number includes plural number and vice versa;
- (b) reference to any Person includes such Person's successors and assigns, but if applicable, only if such successor and assigns are permitted by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually;
- (c) reference to any gender includes each other gender;
- (d) reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof;
- (e) reference in this Agreement to any article, section, appendix, annex, schedule, or exhibit means such article or section thereof or appendix, schedule or exhibit thereto;
- (f) each of the items or agreements identified on the attached Index of Exhibits is deemed part of this Agreement to the same extent as if set forth therein;
- (g) "hereunder", "hereof", "hereto", and words of similar import shall be deemed references to this Agreement as a whole and not to any particular article, section or other provision thereof;
- (h) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term;
- (i) relative to the determination of any period of time, "from" means "from and including" and "to" means "to but excluding"; and
- (j) reference to any constitutional, statutory, or regulatory provision means such provision as it exists on the Effective Date and any amendatory provision thereof or supplemental provision thereto.

SECTION 1.4 ACCOUNTING TERMS. Unless expressly otherwise provided, accounting terms shall be construed and interpreted, and accounting determination and computations shall be made, in accordance with GAAP.

SECTION 1.5 LEGAL REPRESENTATION OF THE PARTIES. This Agreement was negotiated by the parties hereto with the benefits of legal representation and any rules of construction or

interpretation otherwise requiring this Agreement to be construed or interpreted against any party shall not apply to any construction or interpretation hereof or thereof.

[End of Article I]

ARTICLE II

DEFINITIONS

All capitalized terms used in this Agreement shall have the meanings ascribed to them in this Article II, or as otherwise provided herein.

"**Actual Completion Date**" means the date on which construction of all three phases of the Facility is complete and the entire Facility is available to be occupied by retail and commercial tenants.

"**Actual Total Cost**" means the actual total cost of developing and constructing the Facility and the related Public Infrastructure upon completion.

"**Additional Funds**" has the meaning assigned thereto in Section 5.8 of this Agreement.

"**Affiliate**" means any person, entity or group of persons or entities which controls the Developer, which the Developer controls or which is under common control with the Developer. As used herein, the term "control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management and policies, whether through the ownership of voting securities, by contract or otherwise.

"**Agreement**" means this Economic Development Agreement by and among the City, the County, the LGC, the EEDC and the Developer.

"**Annual Incentive Threshold**" has the meaning assigned thereto in Section 5.5.3(a) of this Agreement.

"**Bond Trustee**" means any trustee for the Public Infrastructure Bonds, as designated in the indenture governing such Public Infrastructure Bonds.

"**CERCLA**" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

"**City**" means the City of Edinburg, Texas.

"**City Council**" means the city council of the City.

"**City Records**" has the meaning assigned thereto in Section 5.4.5 of this Agreement.

"**City's Chapter 380 Grant Reimbursement**" has the meaning assigned thereto in Section 5.1(i)(B) of this Agreement.

"*City's Dedicated 1% Sales Tax Revenues*" has the meaning assigned thereto in Section 5.4.2 of this Agreement.

"*City's 1% Sales Tax*" has the meaning assigned thereto in Section 5.4.1 of this Agreement.

"*City's 1% Sales Tax Revenues*" has the meaning assigned thereto in Section 5.4.1 of this Agreement.

"*Closing Date*" means the date on which the Public Infrastructure Bonds are issued and delivered to the initial purchaser thereof.

"*Collateral Documents*" means all documents and agreements contemplated under or executed pursuant to or in connection with either (i) this Agreement, or (ii) the issuance of any Public Infrastructure Bonds.

"*Construction Indemnites*" has the meaning assigned thereto in Section 3.4.8 of this Agreement.

"*Construction Schedule*" means the schedule governing the construction of the Facility and the related Public Infrastructure as set forth on *Exhibit D* attached hereto.

"*Contractor*" has the meaning assigned thereto in Section 3.4.4.(a) of this Agreement.

"*County*" means Hidalgo County, Texas.

"*Damages*" has the meaning assigned thereto in Section 11.1 of this Agreement.

"*Developer*" means Parkade Center, Inc., a Texas corporation.

"*Developer Records*" has the meaning assigned thereto in Section 6.3 of this Agreement.

"*Developer Reimbursements*" has the meaning assigned thereto in Section 5.1 of this Agreement.

"*Development Corporation Act*" means the Development Corporation Act of 1979 (Article 5190.6, V.A.T.C.S.), as amended.

"*EEDC*" shall mean the **EDINBURG ECONOMIC DEVELOPMENT CORPORATION**, a nonprofit corporation created by the City pursuant to Section 4A of the Development Corporation Act.

"*EEDC Incentive Commitment*" has the meaning assigned thereto in Section 5.5.3(a) of this Agreement.

"EEDC Incentive Reimbursement" has the meaning assigned thereto in Section 5.1(ii) of this Agreement.

"EEDC Initial Commitment" has the meaning assigned thereto in Section 5.5.2 of this Agreement.

"EEDC Grants" means the economic development grants paid by the EEDC to the Developer pursuant to Section 5.5 of this Agreement.

"EEDC Records" has the meaning assigned thereto in Section 5.5.4 of this Agreement.

"EEDC Sales Tax" has the meaning assigned thereto in Section 5.5.1 of this Agreement.

"EEDC Sales Tax Revenues" has the meaning assigned thereto in Section 5.5.1 of this Agreement.

"Effective Date" means the date of this Agreement first above written.

"Environmental Regulation(s)" means any and all present and future laws, statutes, ordinances, rules, regulations and orders of any Governmental Agency having jurisdiction over the parties hereto or any portion of the Site and pertaining to the protection of human health, Hazardous Substances, pollution or the environment.

"Facility" has the meaning assigned thereto in the recitals to this Agreement.

"Facility Costs" has the meaning assigned thereto in Section 3.3.1 of this Agreement.

"Final Projected Completion Date" means March 31, 2012.

"Final Public Infrastructure Costs" has the meaning assigned thereto in Section 3.3.4 of this Agreement.

"First Phase Projected Completion Date" means March 31, 2010.

"Fiscal Year" means the successive twelve-month period designated by the EEDC as the fiscal year of the EEDC, which currently ends on September 30 of each calendar year.

"Force Majeure" means an event beyond the reasonable control of a party obligated to perform an act or take some action under this Agreement including, but not limited to, acts of God, earthquake, fire, explosion, war, civil insurrection, acts of the public enemy, act of civil or military authority, sabotage, terrorism, floods, lightning, hurricanes, tornadoes, severe snow storms or utility disruption, strikes, lockouts, major equipment failure or the failure of any major supplier to perform its obligations.

"Fundamental Breach" has the meaning assigned thereto in Section 8.1(b) of this Agreement.

"GAAP" means generally accepted accounting principles.

"Governmental Authorities" shall mean any and all jurisdictions, entities, courts, boards, agencies, commissions, offices, divisions, subdivision, departments, bodies or authorities of any nature whatsoever of any governmental unit (federal, state, county, district, municipality, city or otherwise), whether now or hereafter in existence.

"Governmental Licenses" has the meaning assigned thereto is Section 9.1.7 of this Agreement.

"Hazardous Substance" means any substance that is defined or listed as a hazardous or toxic substance and which is regulated as such or may form the basis of liability under any present or future Environmental Regulation, or that is otherwise prohibited or subject to investigation or remediation under any present or future Environmental Regulation because of its hazardous, toxic or dangerous properties, including, without limitation, (i) any substance that is a "hazardous substance" under CERCLA, and (ii) petroleum, natural gas, natural gas liquids, liquefied natural gas, and synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas), only to the extent that the constituents of such synthetic gas are released or threatened to be released into the environment.

"Incentive Dedicated EEDC Sales Tax Revenues" has the meaning assigned thereto in Section 5.5.3(b) of this Agreement.

"Incentive Period" means the ten (10) year period of time commencing with the beginning of the first Fiscal Year after the EEDC Initial Commitment has been paid in full as described in Section 5.5.2 hereof and continuing for a maximum of ten (10) complete Fiscal Years.

"Indemnitees" has the meaning assigned thereto in Section 11.1 of this Agreement.

"Indemnitor" has the meaning assigned thereto in Section 3.4.8 of this Agreement.

"Initial Dedicated EEDC Sales Tax Revenues" has the meaning assigned thereto in Section 5.5.2 of this Agreement.

"Initial Local Reimbursements" has the meaning assigned thereto in Section 5.1(i) of this Agreement

"IRC" means the Internal Revenue Code of 1986, as amended.

"Liabilities" has the meaning assigned thereto in Section 3.4.8 of this Agreement.

"Local Government Corporation" or **"LGC"** shall mean the **CITY OF EDINBURG, TEXAS LOCAL GOVERNMENT FINANCE CORPORATION**, a non-profit corporation established by the City pursuant to Subchapter D of Chapter 431 of the Texas Transportation Code for the purpose of issuing the Public Infrastructure Bonds.

"Other Facility Costs" has the meaning assigned thereto in Section 3.3.2 of this Agreement.

"Person" shall mean any natural person, firm, partnership, association, corporation, limited liability company, trust, entity, public body or government or other entity.

"Plans and Specifications" means the design and construction plans and specifications for the Facility and related Public Infrastructure as described in Section 3.4.3.

"Projected Budget" means the budget for development and construction of the Public Infrastructure to be constructed as a component of the Facility, which is attached hereto as **Exhibit C**.

"Public Infrastructure" means the streets, roads, water, wastewater and storm drainage, and other public works and public improvements necessary in connection with the Facility, together with other costs incidental to those improvements, as further shown on Exhibit F attached hereto.

"Public Infrastructure Bond Documents" means the Public Infrastructure Bond Indenture and all other documents related to the issuance of the Public Infrastructure Bonds.

"Public Infrastructure Bond Indenture" means the trust indenture governing the issuance of the Public Infrastructure Bonds, in form approved by the LGC.

"Public Infrastructure Bond Proceeds" means the proceeds from the Public Infrastructure Bonds.

"Public Infrastructure Bonds" means bonds or other obligations to be issued in one or more series pursuant to Section 5.3 of this Agreement.

"Public Infrastructure Contract" has the meaning assigned thereto in Section 3.4.4 of this Agreement.

"Public Infrastructure Costs" has the meaning assigned thereto in Section 3.3.2 of this Agreement.

"Public Infrastructure Reimbursement" has the meaning assigned thereto in Section 5.1(i)(A) of this Agreement.

"SARA" means the Superfund Amendments and Reauthorization Act of 1986.

"Second Phase Projected Completion Date" means March 31, 2011.

"Site" means the land on which the Facility will be constructed, as described on **Exhibit A** attached hereto.

"State" means the State of Texas.

"State Economic Development Assistance" has the meaning assigned thereto in Section 5.6 of this Agreement.

"Subcontractors" has the meaning assigned thereto in Section 3.4.7 of this Agreement.

"Tax Increment" has the meaning assigned to it in Section 311.012 of the TIF Act.

"Tax Increment Fund" means the tax increment fund required to be established by the City in connection with the creation of the TIF Zone pursuant to Section 311.004 of the TIF Act.

"Termination Date" means the termination date of this Agreement, as defined in Section 8.2 of this Agreement.

"Texas Enterprise Zone Program" means the economic development program offered through the State of Texas as described in, and in accordance with, Chapter 2303, Texas Government Code, as amended, and Title 10, Part 5, Chapter 176 of the Texas Administrative Code.

"TIF Act" means Chapter 311, Texas Tax Code, as amended.

"TIF Revenues" has the meaning assigned thereto in Section 4.2 of this Agreement.

"TIF Term" has the meaning assigned thereto in Section 4.2 of this Agreement.

"TIF Zone" means the geographic area adjacent to and including the Site described by metes and bounds in **Exhibit B** hereto, to be designated by the City as a reinvestment zone eligible for tax increment financing under Section 311.003 of the TIF Act pursuant to Article IV of this Agreement.

"Tri-Party Agreement" means the agreement among the City, the LGC and the TIF Zone with respect to the administration of TIF Revenues and the development of the Public Infrastructure within the TIF Zone.

[End of Article II]

ARTICLE III

DEVELOPMENT AND OPERATION OF THE FACILITY

SECTION 3.1 OVERVIEW. Subject to the terms and conditions set forth in this Agreement, (a) the Developer shall acquire the Site and develop and construct the Facility on the Site and related Public Infrastructure as contemplated in this Article III, which will be financed in accordance with Article V, and (b) the Public Infrastructure will be conveyed to the City following completion in accordance with Section 3.5.

SECTION 3.2. PUBLIC INFRASTRUCTURE. The City, the LGC and the Developer agree that the Public Infrastructure will be owned by the City or the LGC for the benefit of and use by the general public, and shall be operated in accordance with State law and the rules, regulations and policies of the City for the benefit of the general public. During development and construction, the Developer shall keep separate records and accountings for the portion of the Facility designated as the Public Infrastructure. To the extent feasible, the construction contracts for the Public Infrastructure will be structured in order to avoid the payment of sales taxes on the cost of the materials used in construction of the Public Infrastructure.

SECTION 3.3. PROJECTED BUDGET.

SECTION 3.3.1. FACILITY COSTS. The "*Facility Costs*" shall include the following:

- (a) costs of design and construction of the Facility and related Public Infrastructure in accordance with the Plans and Specifications, including without limitation costs of preparing the Site for construction and costs of all work undertaken because of environmental considerations, including monitoring air and water quality;
- (b) costs of the services of an architect and general contractors;
- (c) reasonable costs of legal counsel of the LGC, the City, the County, the EEDC and the Developer with respect to the negotiation and consummation of this Agreement and the Collateral Documents and representation of the LGC, the City, the EEDC, the County and the Developer in all other matters relating to the Facility;
- (d) reasonable fees and expenses of agencies having jurisdiction over the financing of the Facility and related Public Infrastructure, financial advisors, financial printers, bond counsel, legal counsel, underwriters, escrow agents, trustees and other persons incurred in connection with obtaining financings contemplated in this Agreement;

(e) costs of acquisition of the Site, including title work, surveys, inspections, engineering reports, legal fees and expenses;

(f) costs of furnishing and equipping the Facility in accordance with the Plans and Specifications;

(g) without limitation, any other costs related to the development and construction of the Facility; and

(h) any reasonable costs incurred by the Developer, the City, the County, the EEDC or the LGC prior to the Effective Date of this Agreement.

SECTION 3.3.2. PUBLIC INFRASTRUCTURE COSTS AND OTHER FACILITY COSTS.

The Developer has proposed and the City and LGC hereby approve an estimated budget (a copy of which is attached hereto as *Exhibit C*) (the "**Projected Budget**") for the Public Infrastructure to be constructed as a component of the Facility in accordance with the Plans and Specifications (projected as of the Effective Date of this Agreement). The portion of the Facility Costs for construction and development of the Public Infrastructure are collectively referred to herein as the "**Public Infrastructure Costs**." All Facility Costs other than the Public Infrastructure Costs are collectively referred to herein as the "**Other Facility Costs**." The Developer shall provide the LGC with an updated budget if any changes are made to the Public Infrastructure Costs shown in the Projected Budget or any subsequent updated budget.

SECTION 3.4. DEVELOPMENT AND CONSTRUCTION REMEDIES.

SECTION 3.4.1. DEVELOPER'S RESPONSIBILITIES. The Developer shall, at its cost and expense, (i) acquire the Site, and (ii) cause the Facility and related Public Infrastructure to be constructed and developed as contemplated in this Agreement. The Developer shall proceed diligently with construction of the Facility and related Public Infrastructure pursuant to the Construction Schedule and shall use reasonable efforts to cause construction to be completed so that the three phases of the Facility described in Exhibit E, and related Public Infrastructure, are available to be occupied by retail and commercial tenants and open for business to the public no later than the respective Projected Completion Dates described in Section 6.1 hereof, subject only to delays caused by Force Majeure events.

SECTION 3.4.2. COMPLIANCE WITH LAW BY DEVELOPER. The Developer shall conduct all its activities in compliance with all applicable laws, ordinances, rules and regulations of any Governmental Authority, including without limitation all applicable licenses, permits, building codes, restrictive covenants, zoning and subdivision ordinances and flood disaster and environmental protection laws. The Developer shall, or shall cause the architect, the general contractors and the subcontractors to, obtain all necessary permits, licenses, and approvals to construct the Facility and related Public Infrastructure in accordance with the Plans and Specifications, and shall provide copies thereof to the LGC. The City hereby agrees to waive, to the extent it legally may, all fees or related expenses for

any permits, licences or approvals that must be obtained from the City in connection with the construction and operation of the Facility and related Public Infrastructure.

SECTION 3.4.3. DESIGN AND CONSTRUCTION OF THE FACILITY. The Facility and related Public Infrastructure shall be designed, constructed and equipped in accordance with the Plans and Specifications, which will be prepared by or under the direction of the Developer and the form of which will be mutually agreed upon in writing by the Developer and the LGC and approved within one hundred twenty (120) days after the Effective Date of this Agreement, which approval shall not be unreasonably withheld. Unless otherwise required by law, rule, regulation or interpretation by an agency of the State, the Developer will not be required to bid construction contracts for the Facility and related Public Infrastructure in accordance with the statutory provisions governing the competitive bidding of construction projects by the LGC. The Developer agrees to provide a copy to the City of all documents which it is providing to the LGC in accordance with the terms set for in this Section 3.4.3.

SECTION 3.4.4. OBLIGATIONS SPECIFIC TO THE PUBLIC INFRASTRUCTURE.

(a) *Contract for Public Infrastructure.* The Developer will enter into a contract or contracts with third party contractors (each a "**Contractor**") to outline and oversee all work on the construction of the Public Infrastructure (each a "**Public Infrastructure Contract**"). The Public Infrastructure Contracts (i) may be separate from contracts that the Developer executes for construction of the portions of the Facility that are not Public Infrastructure, or (ii) may be contained in contracts for construction of the entire Facility (including Public Infrastructure) so long as such contracts contain appropriate terms requiring all parties to maintain separate records and accounting for construction of (A) the Public Infrastructure and (B) the other portions of the Facility. All Public Infrastructure Contracts must meet the requirements of this Agreement specifically including, without limitation, those of Section 3.4.6, 3.4.7, and 3.4.8.

(b) *Management of Construction of the Public Infrastructure.* The Developer shall perform the usual and necessary management services incident to projects of the nature and scope of the construction and installation of the Public Infrastructure. The Developer shall thoroughly inspect the work of all Contractors and all subcontractors undertaking work on the Public Infrastructure. In addition, the Developer shall strive to fully and completely settle, by litigation or otherwise, any claims of any Contractor or subcontractor relating to or arising out of the construction and/or installation of the Public Infrastructure or performance or non-performance under any Public Infrastructure Contract without involving the LGC.

(c) *Monthly Certificates Related to Public Infrastructure.* During construction and until the Actual Completion Date, the Developer shall submit monthly certificates, signed by an officer or appointed agent of the Developer and

any applicable general contractor, to the LGC that state, as of a date certain: (i) the specific work on the Public Infrastructure that has been completed since the last monthly report; (ii) the amount of money that the Developer has paid for completion of such work and that the Developer intends to claim as a Public Infrastructure Cost; and (iii) the Developer's calculation of the estimated cost remaining to complete the development and construction of the Public Infrastructure. Upon receipt of any such certificate, the LGC shall have five (5) calendar days to notify the Developer in writing of any objection that the LGC may have as to the amount of money that the Developer has paid or as to the Developer's calculation of the estimated cost remaining to complete the construction and installation of the Public Infrastructure. The grounds for any such objection shall be limited, respectively, to a good faith determination by the LGC that the amount of money paid by or on behalf of the Developer is not sufficiently supported by a respective Public Infrastructure Contract or does not otherwise qualify as a Public Infrastructure Cost under this Agreement. If the Developer disagrees with such objection, the LGC and the Developer shall diligently work in good faith to resolve the dispute.

SECTION 3.4.5. REVIEW BY LGC. The LGC and any authorized designee (which may include representatives of the City) shall have the right to review and inspect the design and construction of the Public Infrastructure in order to make sure that such construction is performed and completed in accordance with the Plans and Specifications. The Developer shall provide access to the Site for the LGC and any authorized designee to undertake such reviews and inspections. If the LGC, in its reasonable discretion, determines in good faith that the design and/or the construction of the Public Infrastructure is not being performed in any material respect substantially in accordance with the Plans and Specifications, then the LGC, after consulting with the Developer (except in the case of an emergency as determined by the LGC), shall have the right to deliver written notice thereto to the Developer, in which event the Developer shall promptly cause each deficiency to be corrected in all material respects in conformity with the Plans and Specifications except in the case of deficiencies with respect to which the Developer and the LGC have agreed in writing either that the deficiency requires no corrective action or that the deficiency may be corrected over time in accordance with a specific corrective action. In the event that the Developer breaches its covenant in the immediately preceding sentence, then the LGC shall have the right to (A) take any and all actions to remedy such breach, (B) issue written instructions to the architect, the general contractors, and any other person or entity performing design and/or construction work for the Public Infrastructure to cease construction until such deficiencies are corrected, (C) obtain appropriate injunctive relief to prohibit the Developer, the architect, the general contractors, and any other person or entity performing design and/or construction work for the Public Infrastructure from proceeding with construction until such deficiencies are corrected, and/or (D) suspend the issuance of Public Infrastructure Bonds to provide the Public Infrastructure Reimbursement.

SECTION 3.4.6. INSURANCE REQUIREMENTS. The Developer shall ensure that the general contractors and architect shall, at their sole expense, maintain in effect at all times

during the full term of the construction of the Facility, insurance coverages substantially consistent with that required by the Developer on other similar projects with insurers licenced to do business in the State of Texas and reasonably acceptable to the LGC and the Developer. Such insurance shall be written on forms of policies reasonably satisfactory to the LGC and the Developer.

SECTION 3.4.7. RELEASE AND WAIVER. General contractors and all subcontractors ("**Subcontractors**"), including without limitation all Contractors, architects and engineers, shall release, and shall cause their insurers to release, the City, the LGC, the Developer, and other Construction Indemnitees from any and all claims or causes of action whatsoever which they or their insurers might otherwise possess resulting in or from or in any way connected with any loss covered or which should have been covered by insurance, including the deductible portion thereof, maintained and/or required to be maintained pursuant to this Agreement, the construction contract, the architect agreement, or any other contract or subcontract, except to the extent such claims or causes of action arise from or are attributed to the sole or concurrent negligence of any Construction Indemnitee.

SECTION 3.4.8. INDEMNITY. The Developer shall ensure that an indemnity provision substantially in the form of the following is incorporated in the construction contracts, including without limitation all Public Infrastructure Contracts, the architect agreement, and all other contracts and subcontracts, as applicable.

"To the fullest extent permitted by applicable law, **Contractors, Architect, Subcontractors ("Indemnitor")** shall indemnify, protect, defend and hold harmless the **LGC, the City, the EEDC,** and each of their respective agents, employees, affiliated companies, successor and assigns (collectively, "**Construction Indemnities**") for, from and against all liabilities, claims, damages, fines, penalties, losses, liens, causes of action, costs, and expenses (including court costs, attorney's fees and costs of investigation) of any nature, kind or description of any person or entity, directly or indirectly arising out of, caused by, or resulting from (in whole or in part), (1) the services or work performed thereunder, (2) this Agreement, or (3) any act or omission or Indemnitor, anyone directly or indirectly employed by Indemnitor, or anyone that the Indemnitor controls or exercises control over (collectively, "**Liabilities**"). Indemnitor shall promptly advise [the **LGC**] and [the **Developer**] in writing of any action, administrative or legal proceeding or investigation as to which this indemnification may apply, and Indemnitor, at its expense, shall assume on behalf of [the **LGC**] and [the **Developer**] (and the other Construction Indemnitees) and conduct with due diligence and in good faith the defense thereof with counsel satisfactory to [the **LGC**] and [the **Developer**]; provided, however, that [the **LGC**] and [the **Developer**] shall each have the right, at their option, to be represented therein by advisory counsel of their own selection and at their own expense. This indemnification shall not be limited to damages, compensation or benefits payable under insurance policies, worker's compensation acts, disability benefit acts or other employee's benefit acts.

SECTION 3.5. CONVEYANCE OF PUBLIC INFRASTRUCTURE. After the Developer has completed the Public Infrastructure, the Developer shall convey and the City shall accept dedication of the Public Infrastructure. Upon such dedication and acceptance, the City shall be responsible for maintaining the Public Infrastructure in a manner consistent with similar infrastructure maintained by the City outside of the TIF Zone. The amount of the Public Infrastructure to be built by the Developer and dedicated to the City shall be limited in accordance with the projects set forth in the Projected Budget. In the event that the costs of the Public Infrastructure exceeds the amount set forth in the Projected Budget, any excess costs shall be paid by the Developer.

[End of Article III]

ARTICLE IV

TIF ZONE FORMATION

SECTION 4.1. TIF ZONE FORMATION. The City will use its reasonable best efforts consistent with applicable law to form a Tax Increment Financing Reinvestment Zone in accordance with Section 311.005(a)(2) of the TIF Act covering the area described in ***Exhibit B*** hereto at the earliest practical date. The City and the County shall participate in the TIF Zone. The parties understand and agree that the Edinburg Consolidated Independent School District, the Hidalgo County Drainage District No. 1, and the South Texas Community College District will not participate in the TIF Zone. The City and the County shall contribute into the Tax Increment Fund the following percentages of their respective Tax Increment related to the TIF Zone until the expiration of the TIF Zone:

<u>City</u>	<u>County</u>
100%	____%

SECTION 4.2. TIF TERM AND USE OF TIF REVENUES. The City anticipates paying to the LGC monies on deposit in the Tax Increment Fund ("***TIF Revenues***") for the purpose of discharging obligations arising out of the Public Infrastructure Bonds for which the TIF Revenues have been pledged and other costs, expenses and obligations incurred by the TIF Zone, the LGC and/or the City under the terms of the Tri-Party Agreement. Unless earlier terminated pursuant to this Agreement, the term of the TIF Zone (the "***TIF Term***") will expire upon the earlier of (i) the date on which all Public Infrastructure Bonds have been paid or defeased and are no longer outstanding, or (ii) thirty (30) years from the effective date of the City ordinance creating the TIF Zone. If at the expiration of the TIF Term TIF Revenues exist which are not required to be paid toward satisfaction of the Public Infrastructure Bonds or other unpaid expenses related to the TIF Zone, such remaining TIF Revenues will be distributed into the general funds of the City and the County in the proportion of each unit's contributions to the TIF Zone for the tax year most recently ended.

[End of Article IV]

ARTICLE V

FINANCING AND DEVELOPER REIMBURSEMENTS

SECTION 5.1. COST OF CONSTRUCTION; POTENTIAL REIMBURSEMENTS. The Developer shall be responsible for, and shall finance, all costs of development and construction of the Facility and related Public Infrastructure, including without limitation all Facility Costs; provided, however, the Developer shall be eligible to be reimbursed for up to **\$17,250,000** of the Facility Costs (the "**Maximum Reimbursement**") but only upon compliance with the terms of this Agreement. The components of the Maximum Reimbursement include the following:

- (i) an aggregate amount of **\$12,000,000** (the "**Initial Local Reimbursements**") to be derived from the following sources:
 - (A) an amount equal to the lesser of (1) **\$8,000,000**, and (2) the actual amount of Public Infrastructure Costs expended by the Developer, subject to submission of evidence required by Section 5.6.3(b) hereof and to adjustment as provided in Section 6.2 below (as adjusted, if any, the "**Public Infrastructure Reimbursement**"), to be paid solely with proceeds of Public Infrastructure Bonds as described in Section 5.3 below;
 - (B) an amount equal to the difference between **\$8,000,000** and the Public Infrastructure Reimbursement (the "**City's Chapter 380 Grant Reimbursement**"), to be paid by the City solely with the City's Dedicated 1% Sales Tax Revenues in accordance with the terms set forth in Section 5.4 hereof; and
 - (C) **\$4,000,000** of costs for site improvements to be paid by the EEDC solely with proceeds from EEDC Grants as described in Section 5.5.2 below.
- (ii) an amount not to exceed **\$4,000,000** (subject to adjustment as provided in Section 6.2 below) of costs for additional site improvements (defined in Section 5.5.3 below as the "**EEDC Incentive Reimbursement**") to be paid solely from EEDC Grants and only upon satisfaction of the conditions described in Section 5.5.3 below; and
- (iii) an amount the Developer may be eligible to receive as State Economic Development Assistance through the Texas Enterprise Zone Program, currently estimated to be equal to a maximum of **\$1,250,000**, as further described in Section 5.6 below.

The Initial Local Reimbursements and the EEDC Incentive Reimbursement will be funded solely from, and only to the extent generated by, the sources described in this Article, and in no event shall any other funds of the City, the County, the EEDC or the LGC be available to be used to fund such Reimbursements. State Economic Development Assistance provided through the Texas Enterprise

Zone Program, if any, shall be funded solely by the State of Texas, and no funds of the City, the County, the EEDC or the LGC shall be used to fund such Assistance.

SECTION 5.2. SEPARATE OBLIGATIONS OF THE DEVELOPER. The payment of all indebtedness and obligations incurred by the Developer in connection with the development and construction of the Facility and related Public Infrastructure and the operation of the Facility shall be solely the obligations of the Developer. The City, the County, the EEDC and the LGC shall not be obligated to pay any indebtedness or obligations of the Developer and shall only be obligated to reimburse the Developer for a portion of the funds for the Facility Costs in accordance with the terms and conditions of this Agreement.

SECTION 5.3. PUBLIC INFRASTRUCTURE BONDS.

SECTION 5.3.1. ISSUANCE OF PUBLIC INFRASTRUCTURE BONDS. Upon satisfying all conditions set forth in Section 5.3.3 hereof, the LGC will use its reasonable best efforts to issue a series of revenue bonds ("**Public Infrastructure Bonds**") after the completion of each phase of the Facility as shown in *Exhibit E*. Each of the three series of Public Infrastructure Bonds anticipated to be issued by the LGC shall be issued in the principal amount sufficient to (i) reimburse the Developer for the lesser of (A) the total Public Infrastructure Reimbursement shown in the Projected Budget to be expended at the Facility, and (B) the actual costs expended by the Developer for Public Infrastructure Costs prior to the issuance of such series of Public Infrastructure Bonds which have not previously been reimbursed to the Developer with proceeds of a series of Public Infrastructure Bonds, plus (ii) an amount, if any, required to fund capitalized interest for such series and for the period of time recommended by the LGC's financial advisor (but in no event longer than one year following completion of the Facility), plus (iii) an amount required to fund a debt service reserve fund (but not in excess of the maximum annual principal and interest payments on such series of the Public Infrastructure Bonds), and plus (iv) an amount sufficient to pay cost of issuance. The specific terms of each series of Public Infrastructure Bonds shall be approved by the LGC and shall be, subject to then prevailing market conditions and application laws, payable annually over not more than twenty (20) years, all of which will be set forth in greater detail in the Public Infrastructure Bond Documents. Each series of Public Infrastructure Bonds will be secured by a parity pledge of the TIF Revenues, and no funds of the City, the County or the EEDC will be available to be used to pay the Public Infrastructure Bonds. Notwithstanding the foregoing, in the event all Public Infrastructure Costs have been incurred by the Developer prior to the beginning of the second or third phase of construction of the Facility and the total Public Infrastructure Reimbursement has been fully satisfied with the issuance of previously issued Public Infrastructure Bonds, no Public Infrastructure Bonds would be issued after the second or third phase of construction, as appropriate.

SECTION 5.3.2. GENERAL ISSUANCE PROVISIONS. Each series of Public Infrastructure Bonds will be issued, to the extent permitted by applicable law, as tax-exempt obligations as described in Section 103 of the IRC; however, it is possible that not all of the

improvements that comprise Public Infrastructure Improvements will qualify to be financed with tax-exempt obligations under Section 103 of the IRC. If the LGC is unable to obtain an opinion of nationally recognized bond counsel that Public Infrastructure Bonds in any series are tax-exempt obligations under Section 103 of the IRC, the LGC reserves the right to issue such series of Public Infrastructure Bonds as taxable obligations. The LGC shall use its reasonable best efforts to obtain a tax-exempt opinion and hereby acknowledges that the law firm of McCall, Parkhurst & Horton L.L.P. is considered a nationally recognized bond counsel that could, in their sole discretion, provide such an opinion. The parties agree that all revenues pledged to the repayment of the Public Infrastructure Bonds shall be transferred to a Trustee to be named in, and will be utilized in accordance with the terms of, the Public Infrastructure Bond Indenture, including the payment of debt service on each series of Public Infrastructure Bonds when due. Each series of Public Infrastructure Bonds (i) will be special, limited obligations of the LGC, (ii) will be non-recourse (no personal liability) to the City, the EEDC, the County or the LGC or their respective members, directors, officers, employees and agents, and (iii) will never be secured by or payable from the general credit or taxing power of the City, the County, the EEDC or the LGC.

SECTION 5.3.3. CONDITIONS TO THE OBLIGATIONS OF THE LGC TO ISSUE PUBLIC INFRASTRUCTURE BONDS. The LGC shall have no duty or obligation to issue any series of Public Infrastructure Bonds unless and until the following conditions have either been satisfied or waived in writing by the LGC:

(a) *Completion of Respective Phase of Facility.* The first, second and/or final phase of the Facility (as shown in ***Exhibit E***), respectively, shall have been completed and available for occupancy by retail and commercial tenants for at least three months.

(b) *Evidence of Public Infrastructure Costs.* The Developer shall have submitted documentation reasonably acceptable to the LGC demonstrating that the Developer has properly constructed and installed all or a portion of the Public Infrastructure for which it is requesting reimbursement and has incurred Public Infrastructure Costs in an amount at least equal to the amount eligible to be reimbursed with such series of Public Infrastructure Bonds (as described in clause (i) of Section 5.3.1 above).

(c) *Cash Flow Projection.* The LGC has received a cash flow projection from the LGC's financial advisor or a financial consulting firm selected by the LGC which reasonably demonstrates that the TIF Zone is expected to generate TIF Revenues in an amount at least equal to 135% of the average principal and interest on such series of Public Infrastructure Bonds and all other series of Public Infrastructure Bonds then outstanding.

(d) Representations and Warranties; Performance of Obligations.

(1) The representations and warranties of the Developer set forth in this Agreement and in each certificate, agreement, document or instrument delivered pursuant hereto on or before the Closing Date or in connection with the transactions contemplated hereby on the Closing Date shall be true and correct in all material respects on the date of this Agreement and on the Closing Date as though made on and as of such Closing Date; and

(2) The Developer shall have timely performed in all material respects all of the covenants, agreements and obligations hereunder to be performed by the Developer on or prior to the Closing Date, and shall not be in material default under this Agreement or any Collateral Document delivered pursuant hereto on or before the Closing Date.

(e) Terms Satisfactory. The form and terms of such series of Public Infrastructure Bonds and the Collateral Documents shall have been approved by the Board of Directors of the LGC in accordance with Texas law, and all necessary documents shall have been executed by the respective parties.

(f) Permits. All approvals, consents and permits from the Attorney General of the State of Texas and other government agencies shall have been obtained as required by law to issue such series of Public Infrastructure Bonds.

(g) Legal Opinions. The LGC's Bond Counsel and the Developer's legal counsel shall have delivered to the LGC and the Developer legal opinions containing such opinions and being in such form as the LGC and the Developer may reasonably request.

(h) Other Matters. The Developer shall have delivered to the LGC, in form and substance satisfactory to the LGC, such certificates and other evidence as the LGC may reasonably request to confirm the satisfaction of the conditions contained in this Section 5.3 which are within the control of the Developer.

(i) No Material Adverse Change. Since the Effective Date of this Agreement, no material adverse change shall have occurred in the financial condition, assets, liabilities or business prospects of the Developer.

(j) No Injunction or Restraints. There shall be no temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other legal restraint or prohibition questioning this Agreement or any obligation contained herein or preventing the collection and payment to the LGC of the revenues to be pledged as security for the Public Infrastructure Bonds or interfering with the use thereof by the LGC.

SECTION 5.4. CITY'S CHAPTER 380 GRANT REIMBURSEMENT.

SECTION 5.4.1 CITY'S 1% SALES TAX AND CITY'S 1% SALES TAX REVENUES. The City represents that the current aggregate sales and use tax rate in the City as of the Effective Date is eight and one-quarter percent (8.25%), of which one percent (1%) is imposed by the City pursuant to Section 321.103 and 321.104, Texas Tax Code, and is herein referred to as the "*City's 1% Sales Tax.*" Revenues derived from the City's 1% Sales Tax (the "*City's 1% Sales Tax Revenues*") are available to be used to make grants of public money to promote local economic development and stimulate business and commercial activity in the City in accordance with Chapter 380.

SECTION 5.4.2. PAYMENT OF CITY'S CHAPTER 380 GRANT REIMBURSEMENT. The City hereby agrees to provide the Developer an aggregate amount equal to the City's Chapter 380 Grant Reimbursement (as determined in accordance with Section 5.1(i)(B) above) to reimburse the Developer for improvements related to the Facility. The City's Chapter 380 Grant Reimbursement shall be derived solely from fifty percent (50%) of the City's 1% Sales Tax Revenues collected and received by the City from the area within the TIF Zone, but minus any expenses incurred by the City in connection with the collection of such Sales Tax Revenues (the "*City's Dedicated 1% Sales Tax Revenues*"). In no event shall the City be obligated to pay, nor shall the City pay, the City's Chapter 380 Grant Reimbursement from any of the City's 1% Sales Tax Revenues collected and received from areas outside of the TIF Zone. The City will provide for the payment of the City's Chapter 380 Grant Reimbursement to be made pursuant to this Section 5.4 by establishing a separate fund, including subaccounts if necessary, or a subaccount of any existing fund or account in the City treasury into which the City's Dedicated Sales Tax Revenues shall be deposited. The City shall pay to the Developer on or before each March 31 and September 30 in an amount equal to the City's Dedicated 1% Sales Tax Revenues received by the City during the preceding six month period, respectively, until such time as the total of the City's Dedicated 1% Sales Tax Revenues provided to the Developer equal the City's Chapter 380 Grant Reimbursement.

SECTION 5.4.3. LIMITATION OF SOURCE OF PAYMENT. The obligation of the City to pay the City's Chapter 380 Grant Reimbursement is limited to the City's Dedicated 1% Sales Tax Revenues as described in this Section 5.4. This Agreement shall create no obligation of the City which is payable from taxes or other moneys of the City other than the City's Dedicated 1% Sales Tax Revenues which are actually collected by the City.

SECTION 5.4.4. AUDITS OF CITY RECORDS. The City agrees that the Developer will have the right to audit the financial and business records of the City that relate to the collection and receipt of City's 1% Sales Tax Revenues collected from within the TIF Zone (collectively "*City Records*") at any time in order to determine compliance with this Section 5.4. The City shall make all City Records available to the Developer at its offices located in the City during normal business hours upon reasonable advance notice by the Developer and shall otherwise cooperate fully with the Developer during any audit.

SECTION 5.5. EEDC GRANTS.

SECTION 5.5.1 EEDC SALES TAX AND EEDC SALES TAX REVENUES. The City and the EEDC represent that the current aggregate sales and use tax rate in the City as of the Effective Date is eight and one-quarter percent (8.25%), of which one-half percent (½%) is imposed by the City for the benefit of the EEDC pursuant to Section 4A of the Development Corporation Act and is herein referred to as the "*EEDC Sales Tax*." Revenues derived from the EEDC Sales Tax (the "*EEDC Sales Tax Revenues*") are periodically transferred by the City to the EEDC for use by the EEDC in accordance with Section 4A of the Development Corporation Act.

SECTION 5.5.2. EEDC INITIAL COMMITMENT. (a) The EEDC hereby agrees to provide the Developer an aggregate amount equal to **\$4,000,000** (the "*EEDC Initial Commitment*") to reimburse the Developer for site improvements related to the Facility. The EEDC Initial Commitment shall be paid in the form of economic development grants ("the *EEDC Grants*") derived solely from one hundred percent (100%) of the EEDC Sales Tax Revenues collected and received by the EEDC from the area within the TIF Zone (the "*Initial Dedicated EEDC Sales Tax Revenues*"). In no event shall the EEDC be obligated to pay, nor shall the EEDC pay, the EEDC Initial Commitment from any EEDC Sales Tax Revenues collected and received from areas outside of the TIF Zone. The EEDC will provide for the payment of the EEDC Initial Commitment to be made pursuant to this Section 5.5.2 by establishing a separate fund, including subaccounts if necessary, or a subaccount of any existing fund or account in the EEDC treasury into which the Initial Dedicated EEDC Sales Tax Revenues shall be deposited. The EEDC Grants to satisfy the EEDC Initial Commitment shall be paid to the Developer on or before each March 31 and September 30 in an amount equal to the Initial Dedicated EEDC Sales Tax Revenues received by the EEDC during the preceding six month period, respectively, until such time as the total EEDC Grants provided to the Developer equal the EEDC Initial Commitment.

(b) As evidenced by its execution of this Agreement, the Board of Directors of the EEDC has found that the EEDC Grants being provided to pay the EEDC Initial Commitment for the purpose of reimbursing the Developer for site improvements related to the Facility in accordance with the terms of this Section are expenditures which are required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises within the City.

SECTION 5.5.3. EEDC INCENTIVE COMMITMENT.

(a) *Amount and Purpose of Incentive Commitment.* In the event that the amount of EEDC Sales Tax Revenues collected and received by the EEDC from the area within the TIF Zone during any Fiscal Year exceeds **\$800,000** (the "*Annual Incentive Threshold*") during the Incentive Period, the EEDC hereby agrees to provide the Developer an additional amount up to a maximum of **\$4,000,000**, subject

to adjustment as provided in Section 6.2 below (as adjusted, if any, the "**EEDC Incentive Commitment**"), to reimburse the Developer for the cost of additional site improvements related to the Facility which were not previously reimbursed with the EEDC Initial Commitment.

(b) *Payment of Incentive Commitment.* The EEDC Incentive Commitment shall be paid in the form of EEDC Grants derived solely from fifty percent (50%) of the EEDC Sales Tax Revenues collected and received by the EEDC from the area within the TIF Zone during a Fiscal Year (the "**Incentive Dedicated EEDC Sales Tax Revenues**"). In no event shall the EEDC be obligated to pay, nor shall the EEDC pay, the EEDC Incentive Commitment from any EEDC Sales Tax Revenues collected and received from areas outside of the TIF Zone. If the total EEDC Sales Tax Revenues collected and received by the EEDC from the area within the TIF Zone during a Fiscal Year within the Incentive Period exceeds the Annual Incentive Threshold, the EEDC shall pay to the Developer an EEDC Grant within 120 days following the end of such Fiscal Year in an amount equal to the lesser of (i) Incentive Dedicated EEDC Sales Tax Revenues received by the EEDC during such Fiscal Year, and (ii) the unpaid EEDC Incentive Commitment. In no event shall the EEDC be obligated to pay, nor shall the EEDC pay, an EEDC Grant from Incentive Dedicated EEDC Sales Tax Revenues collected and received during a Fiscal Year within the Incentive Period to satisfy the EEDC Incentive Commitment if the total EEDC Sales Tax Revenues collected and received by the EEDC from the area within the TIF Zone during such Fiscal Year did not exceed the Annual Incentive Threshold.

(c) *Findings.* As evidenced by its execution of this Agreement, the Board of Directors of the EEDC has found that the EEDC Grants being provided to pay the EEDC Incentive Commitment for the purpose of reimbursing the Developer for additional site improvements related to the Facility in accordance with the terms of this Section are expenditures which are required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises within the City.

SECTION 5.5.4. AUDITS OF EEDC RECORDS. The EEDC agrees that the Developer will have the right to audit the financial and business records of the EEDC that relate to the collection and receipt of EEDC Sales Tax Revenues collected from within the TIF Zone (collectively "**EEDC Records**") at any time in order to determine compliance with this Section 5.5. The EEDC shall make all EEDC Records available to the Developer at its offices located in the City during normal business hours upon reasonable advance notice by the Developer and shall otherwise cooperate fully with the Developer during any audit.

SECTION 5.6. SUBMISSION OF TEXAS ENTERPRISE ZONE PROGRAM APPLICATION. The City and the EEDC will cooperate with the Developer to determine whether the Developer and the Facility are eligible to receive economic development assistance through the Texas Enterprise Zone Program in accordance with Chapter 2303, Texas Government Code, as amended, and Title 10, Part

5, Chapter 176 of the Texas Administrative Code (the "*State Economic Development Assistance*"). If the Developer and the Facility are determined to be eligible to receive the State Economic Development Assistance, the City and the EEDC will use their best efforts to prepare and submit required documentation to nominate the Developer and the Facility for such Assistance as required by law.

SECTION 5.7. COOPERATION OF PARTIES TO DETERMINE SALES TAXES COLLECTED WITHIN THE TIF ZONE. As provided in this Article V, payment of the City's Chapter 380 Grant Reimbursement, the EEDC's Initial Commitment and the EEDC's Incentive Commitment are to be derived solely from sales and use taxes collected from businesses located with the TIF Zone, and in no event shall the City or the EEDC be obligated to pay, nor shall the City or the EEDC pay, such amounts to the Developer from any sales tax revenues collected and received from areas outside of the TIF Zone. In order to assure all parties that only sales tax revenues collected within the TIF Zone are used to pay the City's Chapter 380 Grant Reimbursement, the EEDC's Initial Commitment and the EEDC's Incentive Commitment, the City, the EEDC and the Developer shall cooperate with each other, and shall work with the Comptroller of Public Accounts of the State of Texas, to develop a reporting method which will enable the City, the EEDC and the Developer to determine the amount of the City's 1% Sales Tax Revenues and the EEDC's Sales Tax Revenues which are actually collected solely with the TIF Zone. In the event the City, the EEDC and the Developer are unable to develop with the Comptroller a sales tax reporting method mutually satisfactory to such parties to accomplish the intent of this Section, the Developer shall make a good faith effort to provide the City and the EEDC, not less frequently than quarterly, evidence reasonably satisfactory to the City and the EEDC of the sales tax collections actually paid to the Comptroller from tenants within the Facility, and such evidence shall be the basis for calculating the amount of reimbursements due to the Developer from the City's Chapter 380 Grant Reimbursement (payable from the City's 1% Dedicated Sales Tax Revenues), the EEDC's Initial Commitment (payable from the Initial Dedicated EEDC Sales Tax Revenues) and the EEDC's Incentive Commitment (payable from the Incentive Dedicated EEDC Sales Tax Revenues).

SECTION 5.8. RIGHT TO OFFSET CERTAIN INITIAL LOCAL REIMBURSEMENTS AND EEDC'S INCENTIVE COMMITMENT WITH OTHER SOURCES OF FUNDS. The City and the EEDC may seek, but are not required to seek, additional sources of funds, other than those described in this Agreement, to reimburse the Developer for a portion of the Facility Costs ("*Additional Funds*"). Notwithstanding anything to the contrary set forth in this Agreement, in the event the City or the EEDC obtains Additional Funds and such Additional Funds are actually received and delivered to the Developer prior to the time the Developer has received all funds from the City's Chapter 380 Grant Reimbursement and the EEDC Initial Commitment, the amount of the City's Chapter 380 Grant Reimbursement and the EEDC's Initial Commitment owed to the Developer shall be reduced (pro rata between the City and the EEDC) by an amount equal to the amount of Additional Funds actually received and paid to the Developer. Similarly, notwithstanding anything to the contrary set forth in this Agreement, in the event the City or the EEDC obtains Additional Funds and such Additional Funds are actually received and delivered to the Developer after the time the Developer has received all funds from the City's Chapter 380 Grant Reimbursement and the EEDC Initial Commitment but before the time the Developer has received all funds from the EEDC's Incentive

Commitment, the amount of the EEDC's Incentive Commitment owed to the Developer shall be reduced by an amount equal to the amount of Additional Funds actually received and paid to the Developer.

[End of Article V]

ARTICLE VI

OTHER DEVELOPER OBLIGATIONS

SECTION 6.1. COMPLETION OF THE FACILITY. The Developer shall use reasonable best efforts to cause construction of the Facility and related Public Infrastructure to be completed so that (i) the first phase of the Facility (as shown in *Exhibit E*) is available to be occupied by retail and commercial tenants no later than the First Phase Projected Completion Date, (ii) the second phase of the Facility (as shown in *Exhibit E*) is available to be occupied by retail and commercial tenants by no later than the Second Phase Projected Completion Date, and (iii) the third phase of the facility (as shown in *Exhibit E*) is available to be occupied by retail and commercial tenants by no later than the Final Completion Date. Each of the three Projected Completion Dates described in the preceding sentence shall be extended on a day for day basis for delays caused by (i) Force Majeure events, and (ii) the City's or the County's failure to approve any necessary plans or grant any necessary permits requested by the Developer on or before 120 days from the Effective Date of this Agreement.

SECTION 6.2 ADJUSTMENTS FOR DELAY. In the event that the Developer fails to cause the first, second and/or third phase of the Facility (as shown in *Exhibit E*) to be available to be occupied by retail and commercial tenants on or before the First Phase Projected Completion Date, the Second Phase Projected Completion Date, or the Final Projected Completion date as required by Section 6.1 above, and in the event that such failure is due in no part to actions by the City, the EEDC, the County or LGC, then the Public Infrastructure Reimbursement described in Section 5.1 above to be reimbursed with proceeds from a series of Public Infrastructure Bonds, or the maximum EEDC Incentive Reimbursement described in Section 5.5.3 above if the Public Infrastructure Reimbursement has been paid in full, shall be reduced by an amount equal to \$5,500.00 multiplied by the number of days after the respective Projected Completion Date that the respective phase of the Facility is actually available to be occupied by retail and commercial tenants and open for business. In the event that a portion, but not all, of a phase is actually available to be occupied by retail and commercial tenants and open for business on or before the First Phase Projected Completion Date, the Second Phase Projected Completion Date, or the Final Projected Completion date as required by Section 6.1 above, as applicable, the reduction in the Public Infrastructure Reimbursement or the EEDC Incentive Reimbursement shall be pro rated by the percentage of the Facility that was actually available to be occupied by retail and commercial tenants and open for business on or before the respective Completion Date.

SECTION 6.3. AUDITS OF DEVELOPER RECORDS. The Developer agrees that the City, the EEDC and the LGC will have the right to audit the financial and business records of the Developer (and its Affiliates) that relate to the Site and the Facility (collectively "*Developer Records*") at any time in order to determine compliance with this Agreement. To the extent reasonably possible, the Developer shall make all Developer Records available to the City, the EEDC and the LGC in electronic form or otherwise available to be accessed through the internet following reasonable advance notice by the City, the EEDC and the LGC. The Developer also shall make all Developer Records available to the City, the EEDC and the LGC at the Developer's home office following

reasonable advance notice by the City, the EEDC and the LGC and shall otherwise cooperate fully with the City and the LGC during any audit.

[End of Article VI]

ARTICLE VII

OTHER CITY, COUNTY, AND LGC OBLIGATIONS

SECTION 7.1. FAST-TRACK DEVELOPMENT APPROVALS. The City, the County and the LGC will use all reasonable efforts to expedite the processes of establishing the TIF Zone, authorizing the Public Infrastructure Bonds, and obtaining any necessary rights of way or easements for the infrastructure as required by this Agreement.

[End of Article VII]

ARTICLE VIII

TERMINATION

SECTION 8.1. TERMINATION. This Agreement may be terminated for any of the following reasons:

(a) *By Mutual Consent.* By the mutual consent of the City, the County, the EEDC, the LGC and the Developer.

(b) *By City, EEDC, County or LGC.* By the City, the EEDC, the County or the LGC after compliance with the procedures set forth in Section 8.4 hereof, if Developer commits a breach under Section 9.1.2 which is not cured in a timely manner (a "**Fundamental Breach**").

(c) *By Developer.* By the Developer (i) after compliance with the procedures set forth in Section 8.5, if (A) any of the City's, the EEDC's, the County's or the LGC's representations or warranties contained in this Agreement is, or becomes, untrue in any material respect, or (B) the City, the EEDC, the County or the LGC has failed to perform any of their respective covenants contained in this Agreement.

(d) *Other.* Any party may terminate this Agreement at any time after the later to occur of (i) the repayment in full of all outstanding Public Infrastructure Bonds, (ii) the payment in full of the EEDC Initial Commitment, and (iii) the earlier of (A) the payment in full of the EEDC Incentive Commitment, and (B) the expiration of the Incentive Period.

SECTION 8.2. TERMINATION DATE. The date of termination of this Agreement (the "**Termination Date**") shall mean the date on which this Agreement is terminated for any of the reasons listed in Section 8.1 of this Agreement.

SECTION 8.3. NOTICE OF PROBLEMS. Each party will promptly give written notice to the other parties when it becomes aware of the occurrence or failure to occur, or the impending or threatened occurrence or failure to occur, of any fact or event that would cause or constitute, or would be likely to cause or constitute, (a) any of its representations or warranties contained in this Agreement being or becoming untrue or (b) its failure to perform any of its covenants contained in this Agreement. No such notice shall affect the representations or warranties, covenants or conditions of the parties hereunder, or prevent any party from relying on the representations or warranties contained herein.

SECTION 8.4. CITY, COUNTY, EEDC AND LGC TERMINATION PROCEDURE. If the City, the EEDC, the County or the LGC discovers, by reason of a notice given pursuant to this Agreement or otherwise of any Fundamental Breach, then the City, the EEDC, the County or the LGC may deliver a written notice to the Developer of such Fundamental Breach, specifying the factual basis therefore in reasonable detail. A copy of said notice shall be delivered promptly to the other parties.

The Developer shall have the right to cure any matter set forth in such notice within thirty (30) days following the date such notice is received or such additional time thereafter as is reasonably necessary in order to cure the breach provided Developer diligently pursues the cure during such additional time. Upon such notice and the Developer's failure to timely cure, the City, the EEDC, the County or the LGC may terminate this Agreement by delivering written notice of termination to the parties which will be effective no less than ten (10) days after receipt of such notice by the Developer. A copy of said notice shall be delivered promptly to the other parties.

SECTION 8.5. DEVELOPER'S TERMINATION PROCEDURE. If the Developer discovers, by reason of a notice given pursuant to this Agreement or otherwise, that (i) any of the City's, the EEDC's, the County's or the LGC's representations or warranties are or have become untrue in any material respect, or (ii) the City, the EEDC, the County or the LGC has failed to perform any of its covenants contained in this Agreement in any material respect, then the Developer may deliver a notice to the City, the EEDC, the County and the LGC of such event, specifying the factual basis therefor in reasonable detail. A copy of said notice shall be delivered promptly to the other parties. The City, the EEDC, the County or the LGC shall have the right to cure any matter set forth in such notice within thirty (30) days following the date such notice is received. Upon such notice and failure by the City, the EEDC, County or LGC to timely cure, the Developer may terminate this Agreement by delivering written notice of termination to the City, the EEDC, the County and the LGC which will be effective no less than 10 days after receipt of such notice by the City, the EEDC, the County and the LGC. A copy of said notice shall be delivered promptly to the City, the EEDC and the County.

SECTION 8.6. EFFECT OF TERMINATION. Upon the termination of this Agreement pursuant to this Article VIII, (i) neither the City, the EEDC, the County, the LGC nor the Developer shall have any further duties, obligations or liabilities under this Agreement except for the indemnification and hold harmless agreements set forth herein and (ii) all costs and expenses incurred by the Developer, the City, the EEDC, the County or the LGC, respectively, in connection with this Agreement and the transactions contemplated hereby, including, but not limited to, the costs of the development and construction of the Facility and related Public Infrastructure, shall be borne by the party incurring such costs and expenses. Notwithstanding anything contained in this Agreement to the contrary, termination of this Agreement after any Public Infrastructure Bonds have been issued shall not impact or avoid in any way the obligations of the LGC with respect to such Public Infrastructure Bonds.

[End of Article VIII]

ARTICLE IX

COVENANTS

SECTION 9.1. COVENANTS OF DEVELOPER. From the Effective Date of this Agreement until the later to occur of (i) the Termination Date, and (ii) the date on which all Public Infrastructure Bonds are paid in full and the City's Chapter 380 Grant Reimbursement, the EEDC Initial Commitment and the EEDC Incentive Commitment are fully funded to Developer (unless the Incentive Period has expired prior to fully funding the EEDC Incentive Commitment), unless the Developer shall otherwise consent in writing:

SECTION 9.1.1. COMPLIANCE CERTIFICATE. Upon written request of the City given no more frequently than annually, the Developer shall deliver to the City a certificate executed by the principal financial officer of the Developer stating that a review of the activities of the Developer during such period has been made under his supervision and that to the best of his knowledge and belief after reasonable and due investigation, (i) the Developer has observed, performed and fulfilled each and every obligation and covenant contained in this Agreement and in each of the Collateral Documents or, if there is any exception to the foregoing, specifying the nature and status thereof; and (ii) there exists no event of default or potential default under this Agreement or any of the Collateral Documents as of the date of such certificate or, if any such event shall have occurred, specifying the nature and status thereof.

SECTION 9.1.2. OPERATION OF FACILITY. For a period of not less than five (5) years after the opening of the Facility, the Facility shall at all times (except reasonable periods of closure and repair or reconstruction due to a Force Majeure event) following completion of construction and initially opening for business, be operated, maintained and managed directly by the Developer or any successor as a retail shopping center in a first class manner, consistent with the operation and management for other similar facilities, and in compliance with all applicable laws. For a period of not less than five (5) years after the opening of the third and final phase of the Facility, the Developer shall use reasonable best efforts to keep in effect at all time all permits, licenses and contractual arrangements as may be necessary to meet the standard of operation described in the foregoing sentence.

SECTION 9.1.3. BUSINESS OF THE DEVELOPER. The Developer shall conduct all operations within the Site in compliance with all federal and state laws and City ordinances.

SECTION 9.1.4. COMPLIANCE WITH LAWS. The Developer shall timely comply in all material respects with all laws, issuances, rules and regulations of any governmental authority applicable to the Developer, including, without limitation, all applicable licenses, permits, building codes, restrictive covenants, zoning and subdivision ordinances and flood disaster and environmental protection laws affecting the Facility or the Site, and, upon the request of the City, deliver to the City evidence thereof.

SECTION 9.1.5. INSPECTION OF BOOKS AND RECORDS. The Developer shall at all times keep complete and accurate books and records and accounts of their transactions, in accordance with GAAP, and permit any representative of the City, the EEDC, the County or the LGC designated in writing, at all reasonable times and with then (10) days prior notice, to examine and copy the books and records of the Developer pertaining to the operation of the Facility relating to gross revenues, expenditures, employment data, all contracts, statements, invoices, bills, and claims for labor, material, services supplied for the construction, maintenance, operation and repair of the Facility and the Site, and all other Records.

SECTION 9.1.6. MODIFICATION, AMENDMENT OR TERMINATION OF THE COLLATERAL DOCUMENTS. The Developer shall not modify, amend or terminate any of the Collateral Documents, or any of the other contracts or agreements concerning the construction or development of the Facility that are hereafter approved by the City and the LGC without the prior written consent of the City or the LGC and which consent shall not be unreasonably withheld or delayed.

SECTION 9.1.7. GOVERNMENTAL LICENSES. On the date each phase of the Facility is available to be leased to retail and commercial tenants, the Developer shall have all material governmental licenses, permits, approvals, authorizations, exemptions, classifications and certificates including, without limitation, all federal, state and local regulatory agency approvals and registrations (collectively, the "*Governmental Licenses*") necessary to operate the Facility on the Site, and there shall not exist under any Governmental License any default or violation, or event which, with notice or lapse of time or both, would constitute a default or violation, nor shall there be any basis for the assertion of the foregoing.

SECTION 9.2. COVENANTS OF THE CITY, COUNTY, EEDC AND LGC. From the Effective Date of this Agreement until the later to occur of (i) the Termination Date, and (ii) the date on which all Public Infrastructure Bonds are paid in full and the City's Chapter 380 Grant Reimbursement, the EEDC Initial Commitment and the EEDC Incentive Commitment are fully funded to Developer (unless the Incentive Period has expired prior to fully funding the EEDC Incentive Commitment), unless the Developer shall otherwise consent in writing:

SECTION 9.2.1. ORGANIZATION. The LGC shall not change, and the City will not permit the LGC to change, its organizational documents in any manner that would materially adversely affect the Facility or the Developer.

SECTION 9.2.2. PLEDGE OF PLEDGED REVENUES. The LGC shall pledge all TIF Revenues received from the City and the County for the payment of principal of and interest on the Public Infrastructure Bonds.

SECTION 9.2.3. FUNDING OF EEDC GRANTS. The EEDC shall consider the funding of the EEDC Grants described in this Agreement in conjunction with the annual preparation of its budget.

SECTION 9.3. FURTHER ACTIONS. The City, the EEDC, the County, the LGC and the Developer will do all things reasonably necessary or appropriate to carry out the objectives, terms and provisions of this Agreement and to aid and assist each other in carrying out such objectives, terms and provisions.

[End of Article IX]

ARTICLE X

REPRESENTATIONS AND WARRANTIES

SECTION 10.1. REPRESENTATIONS AND WARRANTIES OF DEVELOPER. The Developer represents and warrants to the City, the EEDC, the LGC and the County, as of the Effective Date and any Closing Date, as follows:

SECTION 10.1.1. ORGANIZATION. The Developer is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and authorized to do business in the State of Texas. The business which the Developer carries on and which it proposes to carry on any lawfully be conducted by the Developer. The Developer is or as of the Closing Date will be duly authorized to conduct business as a corporation in , and is in good standing under the laws of the State of Texas, and each other jurisdiction in which the nature of its properties or its activities requires such authorization.

SECTION 10.1.2. AUTHORITY. The execution, delivery and performance by the Developer of this Agreement and the Collateral Documents to which the Developer may be a party are within the Developer's powers and have been duly authorized by all necessary action of the Developer.

SECTION 10.1.3. NO CONFLICTS. Neither the execution and delivery of this Agreement or the Collateral Documents to which the Developer may be a party, nor the consummation of any of the transactions herein or therein contemplated nor compliance with the terms and provisions hereof or thereof will contravene the organizational documents of the Developer or any provision of law, statute, rule or regulation to which the Developer is subject or any judgment, decree, license, order or permit applicable to the Developer, or will conflict or be inconsistent with, or will result in a breach of any of the terms of the covenants, conditions or provisions of, or constitute a delay under, or result in the creation or imposition of a lien upon any of the property or assets of the Developer pursuant to the terms of any indenture, mortgage, deed of trust, agreement or other instrument to which the Developer is a party or, to the knowledge of the Developer, by which the Developer is bound, or to which the Developer is subject.

SECTION 10.1.4. NO CONSENTS. No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or governmental authority or regulatory body or third party is required for the due execution, delivery and performance by the Deliver of this Agreement, the Collateral Documents to which the Developer may be a party or the consummation of the transactions contemplated hereby or thereby.

SECTION 10.1.5. VALID AND BINDING OBLIGATION. This Agreement is the legal, valid and binding obligation of the Developer, enforceable against the Developer in accordance with its terms except as limited by applicable relief, liquidation, conservatorship,

bankruptcy, moratorium, rearrangement, insolvency, reorganization or similar laws affecting the rights or remedies of creditors generally, as in effect from time to time.

SECTION 10.1.6. NO PENDING LITIGATION. There is no action, proceeding, inquiry or investigation, at law or in equity, before any court, arbitrator, governmental or other board or official, pending to the best knowledge of the Developer threatened against or affecting the Developer or any subsidiaries of the Developer, questioning the validity or any action taken or to be taken by the Developer in connection with the execution, delivery and performance by the Developer of this Agreement or the Collateral Documents to which the Developer may be a party or seeking to prohibit, restrain or enjoin the execution, delivery or performance by the Developer hereof or thereof, wherein an unfavorable decision, ruling or finding (i) would adversely affect the validity or enforceability of, or the authority or ability of the Developer to perform, its obligations under this Agreement or the Collateral Documents to which the Developer may be a party or (ii) would have an adverse effect on the consolidated financial condition or results of operations of the Developer or on the ability of the Developer to conduct its business as presently conducted or as proposed or contemplated to be conducted (including the operation of the Facility).

SECTION 10.1.7. NO DEFAULTS. The Developer is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any material agreement or instrument to which the Developer is a party or by which the Developer or any of its property is bound that would have any material adverse effect on the Developer's ability to perform under this Agreement or the Collateral Documents to which the Developer is a party.

SECTION 10.1.8. FULL DISCLOSURE. Neither this Agreement nor any schedule or exhibit attached thereto in connection with the negotiation of this Agreement contains any untrue statement of a material fact or omits to state any material fact necessary to keep the statements contained herein or therein, in the light of the circumstances in which they were made, from being misleading.

SECTION 10.1.9. NECESSARY CONSENT. The Developer acknowledges that neither the City, the EEDC, the County nor the LGC is committed or obligated to pay any expenditure incurred with respect to the construction of the Facility and related Public Infrastructure except as specifically provided in this Agreement.

SECTION 10.1.10. ENVIRONMENTAL CONDITION; INDEMNIFICATION.

(a) Except as set forth on *Exhibit G* attached hereto, to the actual knowledge of the Developer, (i) the Facility and the Site are now and at all times hereafter will continue to be in material compliance with all Environmental Regulations, including, but not limited to, CERCLA and SARA, and (ii) as of the date hereof, there are no Hazardous Substances (including without limitation, any materials containing asbestos) located on, in or under the Facility or the Site or used in connection

therewith (except as may be necessary in connection with any normal and customary use of the Facility, which the Developer warrants will be stored, handled, used and disposed of properly and in accordance with applicable law). The Developer covenants and agrees that it will promptly notify the City and the LGC of (i) any material change in the nature or extent of any hazardous materials, substances or wastes maintained on, in or under the Facility or the Site or used in connection therewith and (ii) any material spill, emission, release, discharge, disposal, leakage or dumping of any hazardous materials, substances or wastes onto, in or from the Facility or the Site which is not in compliance with applicable federal, state and local environmental laws and regulations, and will transmit to the City and the LGC copies of any citations, orders, notices or other materials, substances, wastes or other environmentally regulated substances affecting the Facility or the Site.

(b) The Developer will indemnify and hold the Indemnitees harmless from and against any and all damages, penalties, fines, claims, liens, suits, liabilities, costs (including clean-up costs), judgments and expenses (including attorneys', consultants' or experts' fees and expenses) of every kind and nature suffered by or asserted against the Indemnitees as a direct or indirect result of any warranty or representation made by the Developer in Section 10.1.10 (a) of this Agreement being false or untrue in any material respect, or any requirements under any law, regulation or ordinance, local, state or federal, which requires the elimination or removal of any hazardous materials substances, wastes or other environmentally regulated substances by the Developer, or any of the Indemnitees or the breach of any covenant of the Developer contained in Section 10.1.10 (a) of this Agreement.

(c) This Section 10.1.10 will survive the termination of this Agreement.

SECTION 10.2. REPRESENTATION AND WARRANTIES OF THE CITY, THE EEDC, THE COUNTY, AND LGC. The City, the EEDC, the County, and the LGC severally represent and warrant to the Developer, as of the Effective Date and any Closing Date, as follows:

SECTION 10.2.1. AUTHORITY. The execution, delivery and performance by the City, the EEDC, the County and the LGC of this Agreement and the Collateral Documents to which they are a party are within their respective powers and have been duly authorized by all necessary action.

SECTION 10.2.2. NO CONFLICTS. Neither the execution and delivery of this Agreement or the Collateral Documents, nor the consummation of any of the transactions herein or therein contemplated nor compliance with the terms and provisions hereof or thereof will contravene the governing documents of the City, the EEDC, the County and the LGC or any provision of law, statute, rule or regulation to which the City, the EEDC, the County or the LGC to their knowledge is subject or any judgment, decree, license, order or permit applicable to the City, the EEDC, the County or the LGC, or will conflict or be inconsistent with, or will result in a breach of any of the terms of the covenants, conditions

or provisions of, or constitute a delay under, or result in the creation or imposition of a lien upon any of the property or assets of the City, the EEDC, the County or the LGC pursuant to the terms of any indenture, mortgage, deed of trust, agreement or other instrument to which the City, the EEDC, the County or the LGC is a party or by which the City, the EEDC, the County or the LGC are bound, or to which the City, the EEDC, the County or the LGC is subject.

SECTION 10.2.3. VALID AND BINDING OBLIGATION. This Agreement is the legal, valid and binding obligation of the City, the EEDC, the County and the LGC, enforceable against the City, the EEDC, the County and the LGC in accordance with its terms except as limited by applicable relief, liquidation, conservatorship, bankruptcy, moratorium, rearrangement, insolvency, reorganization or similar laws affecting the rights or remedies of creditors generally, as in effect from time to time.

SECTION 10.2.4. NO PENDING LITIGATION. There is no action, proceeding, inquiry or investigation, at law or in equity, before any court, arbitrator, governmental or other board or official, pending to the knowledge of the City, the EEDC, the County or the LGC threatened against or affecting the City, the County, the EEDC or the LGC, threatened against or affecting the City, the EEDC, the County or the LGC, questioning the validity of any proceedings taken or to be taken by the City, the EEDC, the County and the LGC in connection with the execution, delivery and performance by the City, the EEDC, the County and the LGC of this Agreement or the Collateral Documents to which they are a party or seeking to prohibit, restrain or enjoin the execution, delivery or performance by the City, the EEDC, the County or the LGC hereof or thereof, wherein an unfavorable decision, ruling or finding (i) would adversely affect the validity or enforceability of, or the authority or ability of the City, the EEDC, the County and LGC to perform, their respective obligations under this Agreement or the Collateral Documents to which they are a party.

SECTION 10.2.5. NO DEFAULTS. The City, the EEDC, the County, and the LGC are not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any material agreement or instrument to which the City, the EEDC, the County or the LGC is a party or by which the City, the EEDC, the County or the LGC are bound that would have any material adverse effect on the City's, the EEDC's, the County's or the LGC's ability to perform under this Agreement or the Collateral Documents to which they are a party.

[End of Article X]

ARTICLE XI

INDEMNIFICATION AND INSURANCE

SECTION 11.1. INDEMNITY. The Developer shall indemnify and hold harmless the LGC, the LGC's officers, directors, employees, and agents, the City and the City's council members, employees and agents, the County and the County's commissioners, employees and agents, the EEDC and the EEDC's officers, directors, employees and agents and any Bond Trustee (collectively, the "*Indemnitee*" or "*Indemnitees*") from any and all damages, losses, liabilities (joint or several), payments, obligations, penalties, claims, litigation, demands, defenses, judgements, suits, proceedings, costs, disbursements or expenses (including, without limitation, fees, disbursements and reasonable expenses of attorney's, accountants and other professional advisors and of expert witnesses and costs of investigation and preparation) of any kind or nature whatsoever (collectively, the "*Damages*"), directly or indirectly resulting from , relating to or arising out of:

(a) the construction, development, maintenance or operation of the Site, the Facility, or the business of the Developer other than Public Infrastructure and other parts of the Site dedicated to the City, EEDC, the County or the LGC;

(b) the formation, organization and operation of the Developer;

(c) any breach of or inaccuracy in any representation or warranty of the Developer contained in this Agreement or any of the Collateral Documents;

(d) any breach or non-performance, partial or total, by the Developer of any covenant or agreement of the Developer contained in this Agreement or in the Collateral Documents;
or

(e) any actual or threatened violation of or non-compliance with, or remedial obligation arising under, any federal or state environmental laws arising from any event, condition, circumstance, activity, practice, incident, action or plan relating in any way to the Site, the Facility, or the business of the Developer.

SECTION 11.2. INDEMNIFICATION PROCEDURES. In case any claim shall be brought or, to the knowledge of any Indemnitee, threatened against any Indemnitee in respect of which indemnity may be sought against the Developer, such Indemnified Party shall promptly notify the Developer in writing; provided, however, that any failure so to notify shall not relieve the Developer of its obligations under this Article XII. The Developer shall have the right to assume the investigation and defense of all claims, including the employment of counsel and the payment of all expenses. Each Indemnitee shall have the right to employ separate counsel in any such action and participate in the investigation and defense thereof, but the fees and expenses of such counsel shall be paid by such Indemnitee unless (i) the employment of such counsel has been specifically authorized by the Developer, in writing, or (ii) the Developer has failed after receipt of notice of such claim to assume the defense and to employ counsel. Each Indemnitee shall cooperate with the Developer in the

defense of any action or claim. The Developer shall not be liable for any settlement of any action or claim without the Developer's consent but, if any such action or claim is settled with the consent of the Developer or there be final judgment for the plaintiff in any such action or with respect to any such claim, the Developer shall indemnify and hold harmless the Indemnitees from and against any Damages by reason of such settlement or judgment as provided in Section 11.1 of this Agreement.

[End of Article XI]

ARTICLE XII

MISCELLANEOUS

SECTION 12.1. ARTICLE, SECTION OR OTHER HEADINGS. Article 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.

SECTION 12.2. ENTIRE AGREEMENT. This Agreement and the Collateral Documents contain the entire agreement between the parties with respect to the transactions contemplated herein.

SECTION 12.3. AMENDMENT. This Agreement may only be amended, altered, or revoked by written instrument signed by all parties.

SECTION 12.4. SUCCESSORS AND ASSIGNS. This Agreement shall be binding on and inure to the benefit of the parties and their respective successors and assigns. Except as specifically provided herein, this Agreement and the Collateral Documents are not assignable without the prior written permission of the other parties thereto.

SECTION 12.5. WAIVER. No term or condition of this Agreement shall be deemed to have been waived, nor shall there be any estoppel to enforce any provision of this Agreement, except by written instrument of the party charged with such waiver or estoppel.

SECTION 12.6. REMEDIES. Upon breach of any of the covenants contained in Article IX or the representations and warranties contained in Article X, in addition to any other remedies expressly set forth in this Agreement with respect to such breach, the aggrieved party shall have such remedies as are available in law or equity for breach of contract; provided, however, that no party shall be liable to any other party for incidental or consequential damages.

SECTION 12.7. NOTICES. Any notice, statement and/or communication required and/or permitted to be delivered hereunder shall be in writing and shall be mailed by first-class mail, postage prepaid, or delivered by hand, messenger, telecopy, or reputable overnight carrier, and shall be deemed delivered when received at the addresses of the parties set forth below, or at such other address furnished in writing to the other parties thereto:

DEVELOPER:

First Hartford Realty Corporation
149 Colonial Road
P.O. Box 1270
Manchester, Connecticut 06045-1270
Attn: _____
Telephone: (860) 646-6555
Facsimile: (860) 646-8572

With a copy to:

Attn: _____
Telephone: _____
Facsimile: _____

CITY:

City of Edinburg, Texas
P.O. Box 1079
210 W. McIntyre
Edinburg, Texas 78540
Attn: City Manager
Telephone: (956) 383-5661
Facsimile: (956) 383-7111

EEDC:

Edinburg Economic Development Corporation
602-B West University
Edinburg, Texas 78539
Attn: Executive Director
Telephone: (956) 383-7124
Facsimile: (956) 380-2738

COUNTY:

Hidalgo County
100 N. Closner Boulevard
Edinburg, Texas 78539
Attn: County Judge
Telephone: (956) 318-2600
Facsimile: (956) 318-2699

With a copy to:

Attn: _____
Telephone: _____
Facsimile: _____

LGC

City of Edinburg, Texas Local Government
Finance Corporation
P.O. Box 1079
210 W. McIntyre
Edinburg, Texas 78540
Attn: City Manager
Telephone: (956) 383-5661
Facsimile: (956) 383-7111

SECTION 12.8. APPLICABLE LAW. This Agreement is made, and shall be construed and interpreted under the laws of the State of Texas, and venue shall lie in State courts located in Hidalgo County, Texas.

SECTION 12.9. SEVERABILITY. In the event any provision of this Agreement is illegal, invalid, or unenforceability under the 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 enforceability and is a similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

SECTION 12.10. NO THIRD-PARTY BENEFICIARIES. The City, EEDC, the County, the LGC and the Developer intend that this Agreement shall not benefit or create any right or cause of action in or on behalf of any third-party beneficiary, or any individual or entity other than the City, the EEDC, the County, the LGC, and the Developer or permitted successors or assignees of such parties, except that the indemnification and hold harmless obligations by the Developer provided for in this Agreement shall inure to the benefit of the Indemnitees.

SECTION 12.11. NO JOINT VENTURE. Nothing contained in this Agreement or the Collateral Documents is intended by the parties to create a partnership or joint venture between the parties, and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint either party as an agent of the other for any purpose whatsoever. Except as otherwise specifically provided herein, neither party shall in any way assume any of the liability of the other for acts of the other or obligations of the other.

SECTION 12.12. COUNTERPARTS. This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which constitute one instrument.

[End of Article XII]

EXECUTED to be effective as of the Effective Date.

FIRST HARTFORD REALTY CORPORATION,
a Delaware corporation

By: _____
Name: _____
Title: _____

CITY OF EDINBURG, TEXAS

ATTEST:

By: _____
Name: _____
Title: _____

City Secretary

APPROVED AS TO FORM AND LEGALITY:

City Attorney

EDINBURG ECONOMIC DEVELOPMENT CORPORATION

By: _____
Name: _____
Title: _____

CITY OF EDINBURG, TEXAS LOCAL GOVERNMENT CORPORATION

By: _____
Name: _____
Title: _____

EXHIBIT A

Site

EXHIBIT B

TIF Zone

EXHIBIT C

Projected Budget

EXHIBIT D

Construction Schedule

EXHIBIT E

Description of Construction Phases

EXHIBIT F

Description of Public Infrastructure

EXHIBIT G

Exceptions to Environmental Conditions