

**SECOND AMENDMENT TO ECONOMIC DEVELOPMENT AGREEMENT
WITH FIRST HARTFORD REALTY CORPORATION REGARDING
CITY OF EDINBURG, TEXAS REINVESTMENT ZONE NUMBER ONE
AND THE DEVELOPMENT KNOWN GENERALLY AS
"THE SHOPPES AT RIO GRANDE VALLEY"**

WHEREAS, pursuant to Ordinance No. 07-3211 adopted by the City Council of the **CITY OF EDINBURG, TEXAS** (the "**City**") on September 4, 2007 (the "**Zone Ordinance**"), the City approved the creation of the **REINVESTMENT ZONE NUMBER ONE, CITY OF EDINBURG, TEXAS** (the "**Zone**") in accordance with the provisions of Chapter 311, Texas Tax Code, as amended; and

WHEREAS, prior to the adoption of the Zone Ordinance, the City, **HIDALGO COUNTY, TEXAS** (the "**County**"), the **EDINBURG ECONOMIC DEVELOPMENT CORPORATION** (the "**EEDC**"), a non-profit corporation created by the City and organized pursuant to Section 4A of the Development Corporation Act of 1979 (originally enacted as Article 5190.6, Vernon's Texas Civil Statutes, now codified under Chapters 501 - 505, Texas Local Government Code), the **CITY OF EDINBURG, TEXAS LOCAL GOVERNMENT CORPORATION** (the "**LGC**"), a non-profit corporation organized under Subchapter D of Chapter 431 of the Texas Transportation Code, as amended, and **FIRST HARTFORD REALTY CORPORATION**, a Delaware corporation (the "**Developer**"), entered into an Economic Development Agreement, dated as of February 20, 2007 (the "**Original Development Agreement**"), which set forth the respective party's rights and obligations in connection with the development and construction by the Developer of a retail shopping center in the City (now generally known as "*The Shoppes at Rio Grande Valley*"), which is further described therein (the "**Project**"), and the potential reimbursements to be provided to the Developer by the City, the County and the EEDC; and

WHEREAS, the Original Development Agreement was amended by the "*First Amendment to Economic Development Agreement with First Hartford Realty Corporation Regarding City of Edinburg, Texas Reinvestment Zone Number One and the Development Known Generally as 'The Shoppes at Rio Grande Valley,'*" dated and effective as of July __, 2011 (the "**First Amendment**"); and

WHEREAS, the Original Development Agreement, as amended by the First Amendment, is referred to collectively herein as the "**Development Agreement**"; and

WHEREAS, all capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Development Agreement; and

WHEREAS, Section 5.1(i)(A) of the Development Agreement provides that the City will reimburse the Developer for "*the lesser of (a) \$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"; and

WHEREAS, the Developer has notified the City and the LGC that it has completed all Public Infrastructure improvements that were contemplated in the Development Agreement to be constructed within the Zone and that the Developer incurred and has paid actual Public Infrastructure Costs related thereto in the amount of \$4,403,392; and

WHEREAS, the Developer has requested that the LGC issue its Public Infrastructure Bonds to reimburse the Developer for the Public Infrastructure Costs described in the preceding recital, and the Developer has represented to the City and the LGC that the receipt of such reimbursement will assist the Developer with funding Phase 2 of the Project as contemplated by the Development Agreement; and

WHEREAS, Section 5.3 of the Development Agreement provides that the LGC will use its best efforts to issue a series of Public Infrastructure Bonds to provide funds to reimburse the Developer for the Public Infrastructure Reimbursement and sets forth certain details relating to the issuance of Public Infrastructure Bonds, including (i) that Public Infrastructure Bonds would be payable annually over not more than 20 years, as set forth in Section 5.3.1 of the Development Agreement, and (ii) that the LGC must receive a cash flow projection from its financial advisor which 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

WHEREAS, the 20 year maturity limitation set forth in Section 5.3.1 was incorporated in the Development Agreement to comply with the provisions of Section 311.015(l), Texas Tax Code in effect when the Development Agreement was originally approved and executed; however, Section 311.015(l), Texas Tax Code, was amended by the Texas Legislature in 2011 to provide that a tax increment bond or note "must mature on or before the date by which the final payments of tax increment into the tax increment fund are due"; and

WHEREAS, in accordance with Section 5 of the Zone Ordinance, the Zone is scheduled to terminate on September 6, 2037; consequently, Public Infrastructure Bonds issued by the LGC to reimburse the Developer for the Public Infrastructure Reimbursement could have a maximum maturity of January 31, 2037; and

WHEREAS, the Developer has notified the City and the LGC that it is working with a "qualified institutional buyer" within the meaning of Rule 144A promulgated by the Securities and Exchange Commission ("**Rule 144A**") that is willing to purchase Public Infrastructure Bonds, on a private placement basis, issued by the LGC to reimburse the Developer for the Public Infrastructure Reimbursement under financial conditions that are less stringent than those set forth in Section 5.3 of the Development Agreement; and

WHEREAS, as a condition to issuing Public Infrastructure Bonds to such qualified institutional buyer, the LGC's financial advisor has advised the LGC and the City that the ability of the qualified institutional buyer to sell, transfer, or otherwise dispose of the Public Infrastructure Bonds issued by the LGC under less stringent conditions than those set forth in Section 5.3 of the

Development Agreement should be restricted to only financial institutions which also meet the requirements of a qualified institutional buyer within the meaning of Rule 144A; and

WHEREAS, the Tax Increment Fund created by the Zone Ordinance has accumulated a balance therein which the City and the LGC desire to use to pay a portion of the Public Infrastructure Reimbursement to the Developer or otherwise utilize to reduce the principal amount of Public Infrastructure Bonds necessary to fully pay the Public Infrastructure Reimbursement to the Developer; and

WHEREAS, the Developer represents that it currently is in compliance with all covenants, representations, warranties and obligations of the Developer set forth in the Development Agreement; and

WHEREAS, for the reasons described above, the parties to the Development Agreement deem it appropriate to amend the Development Agreement as set forth in this Second Amendment;

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:

SECTION 1. AMENDMENT TO SECTION 5.1(i) (A). Section 5.1(i)A of the Development Agreement is amended for the purpose of permitting the use of moneys on deposit in the Tax Increment Fund to pay all or a portion of the Public Infrastructure Reimbursement and shall read in its entirety as follows:

- (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 funds on deposit in the Tax Increment Fund and/or proceeds of Public Infrastructure Bonds as described in Section 5.3 below;

SECTION 2. AMENDMENT TO SECTION 5.3. Section 5.3 of the Development Agreement is amended for the purpose of modifying the terms related to the issuance of Public Infrastructure Bonds to reimburse the Developer for all or a portion of the Public Infrastructure Reimbursement and shall read in its entirety as follows:

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 one series of revenue bonds ("**Public Infrastructure Bonds**") in an amount sufficient to (i) reimburse the Developer for the total Public Infrastructure Reimbursement described in Section 5.1(i)(A) hereof, (ii) 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 (iii) pay cost of issuance. The specific terms of the Public Infrastructure Bonds shall be approved by the LGC and shall be, subject to then prevailing market conditions and applicable laws, payable annually and with a final maturity not later than January 31, 2037, all of which will be set forth in greater detail in the Public Infrastructure Bond Documents. The Public Infrastructure Bonds will be secured by a 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.

SECTION 5.3.2. GENERAL ISSUANCE PROVISIONS. The 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 the Public Infrastructure Bonds are tax-exempt obligations under Section 103 of the IRC, the LGC reserves the right to issue the 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 the Public Infrastructure Bonds when due. The 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 Public Infrastructure Bonds unless and until the following conditions have either been satisfied or waived in writing by the LGC:

(a) *Completion of First Phase of Facility.* The first phase of the Facility (as shown in ***Exhibit E***) 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 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 the 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 105% of the average principal and interest on the Public Infrastructure Bonds.

(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.

(k) Public Infrastructure Bonds Purchased Only by Qualified Institutional Investor. The Public Infrastructure Bonds shall be purchased only by a "qualified institutional investor" within the meaning of Rule 144A promulgated by the Securities and Exchange Commission, and such qualified institutional investor shall have provided an investment letter, in form and substance satisfactory to the LGC and the LGC's financial advisor and bond counsel, which, among other provisions, restricts the ability of such qualified institutional investor to sell, transfer or otherwise convey any of the Public Infrastructure Bonds to any person other than another qualified institutional investor who executes and delivers to the LGC an investment letter containing substantially the same provisions set forth in the original investment letter.

SECTION 3. AMENDMENT TO SECTION 6.2. Section 6.2 of the Development Agreement is amended for the purpose of adding a new subparagraph (b) to provide consequences in the event the Developer fails to pay all ad valorem taxes due to the City or County while any Public Infrastructure Bonds are outstanding and shall read in its entirety as follows:

SECTION 6.2 ADJUSTMENTS FOR DELAY AND FAILURE TO PAY AD VALOREM TAXES.

(a) 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 Public Infrastructure Bonds and/or funds on deposit in the Tax Increment Fund, 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.

(b) Adjustments for Failure to Timely Pay Ad Valorem Taxes. In the event any Public Infrastructure Bonds are outstanding and the Developer fails to pay 100% of the ad valorem taxes levied and assessed by the City or County on taxable property located within the TIF Zone by January 31 of any Fiscal Year, then the City's Chapter 380 Grant Reimbursement and the maximum EEDC Incentive Reimbursement described in Section 5.5.3 above shall each be reduced by an amount equal to \$2,750.00 multiplied by the number of days which elapse between such January 31 and the date on which the Developer pays 100% of such ad valorem taxes levied by the City or County.

SECTION 4. NO OTHER MODIFICATIONS INTENDED. Except to the extent specifically modified by the provisions of this Agreement, all other provisions of the Development Agreement are to remain in full force and effect.

SECTION 5. INCORPORATION OF RECITALS. The City, the County, the EEDC, the LGC, and the Developer hereby find that the statements set forth in the recitals of this Agreement are true and correct, and the City, the County, the EEDC, the LGC, and the Developer hereby incorporate such recitals as a part of this Second Amendment.

SECTION 6. COUNTERPARTS. This Second Amendment may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same instrument.

SECTION 7. APPROVALS. Upon execution of this Second Agreement by the authorized representatives of the City, the County, the EEDC, and the LGC, each of the City, the County, the EEDC, and the LGC represents that this Second Amendment has been duly approved by its respective governing body. Upon execution of this Second Agreement by the authorized representative of the Developer, the authorized representative of the Developer represents that it is duly authorized to execute this Second Amendment on behalf of the Developer and that this Second Amendment has been duly approved by the Developer.

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IN WITNESS HEREOF, the City, the County, the EEDC, the LGC, and the Developer have made and executed this Agreement, which is hereby dated and effective as of the ____ day of _____, 2011.

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: _____

ATTEST:

County Clerk

APPROVED AS TO FORM:

ATLAS & HALL, L.L.P.

By: _____
Stephen L. Crain