

**AGREEMENT TO TERMINATE ECONOMIC DEVELOPMENT AGREEMENT
RELATING TO THE SHOPPES AT RIO GRANDE VALLEY**

This **AGREEMENT TO TERMINATE ECONOMIC DEVELOPMENT AGREEMENT RELATING TO THE SHOPPES AT RIO GRANDE VALLEY** (this "**Agreement**"), dated as of March 1, 2015, is entered into 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 FINANCE 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 City, the County, the EEDC, the LGC and the Developer entered into that certain *Economic Development Agreement*, dated and effective as of February 20, 2007, which was subsequently 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 August 16, 2011, and further subsequently amended by the *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,"* dated and effective as of November 15, 2011 (collectively, 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, the Development Agreement was entered into by the parties in connection with a proposal by the Developer to construct and develop a new retail shopping center (further described and defined in the Development Agreement as the "Facility") located generally near the intersection of East Trenton Road and South U.S. Highway 281 in the City, which is now known as "*The Shoppes at Rio Grande Valley*"; and

WHEREAS, the Development Agreement contains numerous obligations on the part of the Developer to construct and develop the Facility and entitles the Developer to receive a Maximum Reimbursement of up to \$17,250,000,¹ upon satisfaction of certain conditions, from specifically designated funds of the City and the EEDC and from Tax Increment payments made by the City and the County generated within the reinvestment zone created by the City as required by the Development Agreement (now known as *Reinvestment Zone Number One, City of Edinburg, Texas - "TIRZ One"*), for costs related to construct Public Infrastructure related to the Facility and assist the Developer with other certain other costs related to the Facility; and

WHEREAS, as more specifically set forth in Article V of the Development Agreement, the Developer is eligible, upon satisfaction of certain conditions, to receive up to an aggregate of \$12,000,000 as **Initial Local Reimbursements** which are described as follows:

- (i) the **Public Infrastructure Reimbursement**, 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 certain evidence required by the Development Agreement, to be paid solely with proceeds of Public Infrastructure Bonds as described in Section 5.3 of the Development Agreement;
- (ii) the **City's Chapter 380 Grant Reimbursement** equal to the difference between **\$8,000,000** and the Public Infrastructure 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 of the Development Agreement; and
- (iii) **\$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 of the Development Agreement; and

WHEREAS, the Developer also is eligible, upon satisfaction of certain conditions, to receive the **EEDC Incentive Reimbursement** equal to an amount not to exceed **\$4,000,000** (subject to adjustment as provided in Section 6.2 of the Development Agreement), to be paid solely from EEDC Grants and only upon satisfaction of the conditions described in Section 5.5.3 of the Development Agreement; and

WHEREAS, on January 3, 2012, the LGC issued and delivered \$4,275,000 in principal amount of its *Tax Increment Contract Revenue Bonds, Series 2011* (the "**Series 2011 Bonds**") for the purpose of providing a portion of the funds required to pay the Developer for the Public Infrastructure Reimbursement; and

¹Up to \$1,250,000 of such potential reimbursement would have been obtained from the State of Texas if the Developer qualified to receive State Economic Development Assistance through the Texas Enterprise Zone Program Facility. No local entities were obligated to provide such reimbursement.

WHEREAS, upon delivery of the Series 2011 Bonds, the LGC transferred proceeds of the Series 2011 Bonds and other available funds in the amount of \$4,403,382.00, which amount was equal to, and fully satisfied, the Public Infrastructure Reimbursement due and owing to the Developer; and

WHEREAS, with the payment of the Public Infrastructure Reimbursement on January 3, 2012, the total amount due to the Developer as the City's Chapter 380 Grant Reimbursement was reduced to \$3,596,618.00, of which the City has paid the Developer with a total of \$2,024,352.00 from the City's Dedicated 1% Sales Tax Revenues (as of September 30, 2014)², which leaves a balance to be paid for the City's Chapter 380 Grant Reimbursement equal to \$1,572,266.00 (the "**Remaining City's Dedicated 1% Sales Tax Reimbursement**"); and

WHEREAS, with respect to the commitment of the EEDC to provide EEDC Grants to reimburse the Developer for \$4,000,000.00 of costs for site improvements, the EEDC has provided the Developer with a total of \$2,024,352.00 of EEDC Grants (as of September 30, 2014), which leaves a balance to be paid in the amount of \$1,975,684.00 (the "**Remaining EEDC Grant Reimbursement**"); and

WHEREAS, the City, the EEDC and the LGC are working with a private entity to develop and construct a new multipurpose arena and entertainment center which will be owned by the LGC and leased to and operated by third party (the "**Entertainment Center**"); and

WHEREAS, the City and the EEDC desire to pledge certain of their respective revenues to secure "Contract Revenue Bonds" that are expected to be issued by the LGC to provide a portion of the funds to construct and equip the Entertainment Center and accomplish other related purposes, and in order to do so the City and the EEDC need to be able to satisfy, and be released from, its obligations to make future reimbursement payments to the Developer under the Development Agreement; and

WHEREAS, in lieu of the City and the EEDC continuing to make periodic payments to the Developer to satisfy the City's Chapter 380 Grant Reimbursement and the EEDC Grants over a period of years, the City and the EEDC have proposed paying to the Developer on or before March 11, 2015, a lump sum payment in the amount of \$3,547,950.00 (the "**Final Reimbursement Amount**," which amount is equal the Remaining City's Dedicated 1% Sales Tax Reimbursement and the Remaining EEDC Grant Reimbursement) in consideration for the Developer agreeing to terminate the Development Agreement pursuant to Article VIII of the Development Agreement and release the County, the City and the EEDC from all future obligations thereunder, including but not limited to the EEDC Incentive Reimbursement, which termination and release shall become effective immediately upon such payment; and

²Note: All figures and dates in this draft which are highlighted in yellow will be updated to reflect any additional payments made to First Hartford prior to March 11, 2015. Currently it is expected that one additional payment will be made between February 13, 2015 - February 20, 2015 for approximately \$400,000. Such additional payment will have the effect of reducing the Final Reimbursement Amount by the amount of such additional payment.

WHEREAS, in order to assure the City and the EEDC that the Developer will fully and completely terminate the Development Agreement and release the City and the EEDC from all future payments required thereunder, it is necessary for the parties hereto to execute this Termination Agreement; and

WHEREAS, the City and the EEDC also have represented to the Developer that funds will be provided on or about March 11, 2015 to pay and redeem all outstanding Series 2011 Bonds at the redemption price of par plus accrued interest; and

WHEREAS, this Agreement will become irrevocable to each party upon its execution thereof, and the termination of and release of all further obligations under the Development Agreement being provided by this Agreement, as further described in Section 1 below, shall become effective only upon the later of (i) the delivery to the Developer of the funds described in Section 1 of this Agreement, and (ii) receipt by the Developer of written evidence that the Series 2011 Bonds have been paid or defeased and are no longer outstanding;

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

SECTION 1. PAYMENT OF FINAL REIMBURSEMENT AMOUNT; TERMINATION OF DEVELOPMENT AGREEMENT. In consideration of the mutual promises and agreements contained in this Agreement, including the recitals set forth above, the parties hereby agree that on or before March 11, 2015, the City and the EEDC will cause to be wire transferred to the Developer, in immediately available funds, an amount equal to the Final Reimbursement Amount for the purposes described in the recitals of this Agreement. Immediately upon receipt by the Developer of such Final Reimbursement Amount and written evidence that the Series 2011 Bonds have been paid and redeemed and are no longer outstanding, the Development Agreement shall automatically terminate and neither the City, the County, the EEDC, the LGC, nor the Developer shall have any further obligations thereunder except with respect to the Developer for the limited purpose set forth in Section 2 hereof. For purposes of clarity, all parties acknowledge and agree that the termination of the Development Agreement in accordance with the terms of this Agreement shall constitute a full, complete and final release as to all obligations of (i) the City, the County, the EEDC, and the LGC to the Developer under the Development Agreement (including but not limited to the payment by the EEDC to the Developer of the EEDC Incentive Reimbursement), and (ii) the Developer to the City, the County, the EEDC, and the LGC except for the limited purpose set forth in Section 2 hereof.

SECTION 2. DEVELOPER'S CONTINUING OBLIGATIONS.

(A) **DEVELOPER TO CONTINUE TO COOPERATE WITH CITY AND EEDC TO PROVIDE SALES TAX INFORMATION WITHIN TIRZ ONE.** In Section 5.7 of the Development Agreement, the City, the EEDC and the Developer agreed to cooperate with each other, and to work with the Comptroller of Public Accounts of the State of Texas, to develop a reporting method which would 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 within TIRZ One. Such cooperation has been very helpful to all parties in order to provide accurate sales tax collection information, which has been used as the basis of certain reimbursements provided to the Developer in accordance with the Development Agreement. The Developer recognizes and acknowledges that, in connection with providing certain financial support for the construction of a new multi-purpose entertainment center in the City, the City has entered into a new contractual commitment to provide fifty percent (50%) of the sales tax revenues generated from the City's general 1% sales tax collected within TIRZ One; therefore, the City will have a continuing need to accurately determine the amount of the City's 1% Sales Tax Revenues which are actually collected within TIRZ One. Accordingly, the Developer agrees to continue cooperating with the City and the EEDC, and to continue working with the Comptroller of Public Accounts of the State of Texas, to develop, or modify as necessary, a reporting method which would enable the City, the EEDC and the Developer to continue determining the amount of the City's 1% Sales Tax Revenues which are actually collected solely within TIRZ One. 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.

(B) **INDEMNIFICATION AND HOLD HARMLESS AGREEMENTS.** In Section 8.6 of the Development Agreement, the parties agreed that the termination of the Development Agreement by mutual consent of the parties pursuant to Section 8.1 of the Development Agreement does not terminate certain obligations of the Developer. Accordingly, the parties acknowledge and agree, notwithstanding the termination of the Development Agreement by mutual consent pursuant to Section 8.1 of the Development Agreement provided for hereunder, that the indemnification and hold harmless agreements of the Developer pursuant to Article XI of the Development Agreement, which are incorporated herein by reference, continue in full force and effect.

SECTION 3. IRREVOCABLE AGREEMENT. All parties to this Agreement acknowledge and agree that this Agreement shall become binding on each respective party immediately upon execution thereof by such party and that this Agreement shall be and remain irrevocable by any party from and after the effective date of this Agreement.

SECTION 4. GOVERNING LAW. This Agreement is made according to the laws of the State of Texas. The parties expressly agree that this Agreement is governed by, and will be construed and enforced in accordance with, Texas law.

SECTION 5. BINDING EFFECT. This Agreement is binding on and inures to the benefit of the parties and their respective heirs, representatives, successors, and assigns.

SECTION 6. ENTIRE AGREEMENT. This Agreement contains the entire agreement between the parties. It supersedes any and all prior agreements, arrangements, or understandings between the parties on all subjects in any way related to the transaction or occurrence described in this Agreement. No oral understandings, statements, promises, or inducements contrary to or consistent with the terms of this Agreement exist. This Agreement is not subject to any modification, waiver, or addition that is made orally. This Agreement is subject to modification, waiver, or addition only by means of a writing signed by all parties.

SECTION 7. COUNTERPARTS. This Agreement may be executed in any number of identical counterparts, each of which will be deemed an original for all purposes.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the day and year first above written.

FIRST HARTFORD REALTY CORPORATION,
a Delaware corporation

By: _____
Name: _____
Title: _____

CITY OF EDINBURG, TEXAS

ATTEST:

By: _____
Richard H. Garcia, Mayor

By: _____
Myra L. Ayala Garza, City Secretary

APPROVED AS TO FORM AND LEGALITY:

Palacios & Associates, P.C.

By: _____
City Attorney

**EDINBURG ECONOMIC
DEVELOPMENT CORPORATION**

By: _____
Richard H. Garcia
President, Board of Directors

**CITY OF EDINBURG, TEXAS
LOCAL GOVERNMENT FINANCE
CORPORATION**

By: _____
Elias Longoria, Jr.
President, Board of Directors

HIDALGO COUNTY, TEXAS

ATTEST:

Arturo Guajardo, Jr., County Clerk

By: _____
Ramon Garcia, County Judge

APPROVED AS TO FORM:

Atlas, Hall & Rodriguez, L.L.P.

By: _____
Stephen L. Crain