

FIRST AMENDMENT TO CHAPTER 381 ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

This First Amendment is made this 24th day of May, 2010, by and between the **COUNTY OF EL PASO, TEXAS** (the "**COUNTY**") and **HAWKINS CENTER, LP**, successor-in-interest to Hawkins Regency, LLC, ("**APPLICANT**").

WHEREAS, on February 23, 2009, the **COUNTY** and **APPLICANT** entered into a Chapter 381 Economic Development Program Agreement (the "**AGREEMENT**"), a copy of which is attached and labeled as Exhibit "A", for the purposes of promoting local economic development and stimulating business and commercial activity within the County of El Paso; and

WHEREAS, the **COUNTY** and **APPLICANT** now desire to amend the Agreement to extend certain contract deadlines, to stipulate the minimum taxable property value for the **DEVELOPMENT** during the term of the Agreement, and to reduce the maximum grant award available to **APPLICANT** under this Agreement.

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE PREMISES AND OF THE MUTUAL COVENANTS AND AGREEMENTS, THE PARTIES HEREBY MUTUALLY AGREE AS FOLLOWS:

1. Page 4, Section 3. Obligations of Applicant, subsection (a) Development, first paragraph is hereby amended to read as follows:

Subject to the terms and conditions set forth in this Agreement, **APPLICANT** agrees to perform the Site Preparation Work and to redevelop and construct, at its sole cost and expense, or the expense of its lessees or users, the **LIFESTYLE COMPONENT** with a minimum area of the greater of: (i) 50,000 square feet, or (ii) ten percent (10%) of the total square footage of the **DEVELOPMENT** or any portion thereof to the extent that **APPLICANT** elects to redevelop and construct the entire **DEVELOPMENT** or any portion thereof; except that in performance of the Site Preparation Work **APPLICANT** is expressly obligated to and shall commence demolition of buildings presently situated on the Property, to include foundational slabs, by no later than August 1, 2010 and shall complete such demolition work components no later than July 31, 2011, subject to force majeure delays (as addressed in Section 9(j) below) . If **APPLICANT** so elects to construct the entire **DEVELOPMENT** or any portion thereof, identifiable lifestyle amenities will be distributed throughout, as depicted in **APPLICANT'S** detailed site development plan in **Exhibit "B-1"** and listed in **Exhibit "B"**.

2. Page 5, Section 3. Obligations of Applicant, subsection (a) Development, the first two sentences of the fifth paragraph are hereby amended to read as follows:

Subject to force majeure delays (as addressed in Section 9(j) below), **APPLICANT** shall (i) commence the Site Preparation Work within twelve (12)

months after the Effective Date; and (ii) substantially complete the Site Preparation Work within seventy-two (72) months following the Effective Date. In addition, in order for **APPLICANT** to qualify for **GRANT** payments under this Agreement, if **APPLICANT** determines in its sole discretion to construct the **DEVELOPMENT** or portion thereof including the **LIFESTYLE COMPONENT**, **APPLICANT** shall (iii) commence construction of the **LIFESTYLE COMPONENT** within seventy-two (72) months following the Effective Date; and (iv) substantially complete construction of the **LIFESTYLE COMPONENT** within ninety-six (96) months following the Effective Date.

3. Page 6, Section 3. Obligations of Applicant, subsection (b) Amount of Grant, is hereby amended in its entirety to read as follows:

(b) **AMOUNT OF GRANT.** The total **GRANT** amount payable by the **COUNTY** under this Agreement, if any, shall be the aggregate of all payments made that results in a maximum Net Present Value of Three Million Nine Hundred Thousand Dollars (\$3,900,000.00).

4. Page 6, Section 3. Obligations of Applicant, subsection (c) Disbursement of Grant, the first sentence of subsection (c) is hereby amended to delete the words "sixty (60) months" and substitute with the words "ninety-six (96) months", thereby extending the Applicant's deadline to submit an Initial Grant Submittal Package to the County by an additional thirty-six months.

5. Page 7, Section 3. Obligations of Applicant, subsection (c) Disbursement of Grant, fourth paragraph, is hereby amended to read as follows:

GRANT payments will continue until the earlier of the expiration of the term of this Agreement or until the aggregate of all payments made results in a Net Present Value of THREE MILLION NINE HUNDRED THOUSAND DOLLARS (\$3,900,000.00). Under no circumstances shall the **COUNTY** be required to disburse under this Agreement more than an aggregate of all payments made that would exceed the Net Present Value of THREE MILLION NINE HUNDRED THOUSAND DOLLARS (\$3,900,000.00), nor shall **APPLICANT** be entitled to receive the **GRANT** unless it satisfies all the requirements of Section 3 of this Agreement.

6. Page 8, Section 3. Obligations of Applicant, subsection (f) Property Value, is hereby amended to add the following additional paragraph, to read as follows:

APPLICANT covenants and agrees that for each year during the term of this Agreement, **APPLICANT** will submit to the El Paso Central Appraisal District a rendition of real property valuation in an aggregated amount of at least \$18,980,000.00 for all properties in the **DEVELOPMENT**. **APPLICANT** must file Form 50-141 General Real Estate Rendition of Taxable Property or other form(s) as required by the El Paso Central Appraisal District after January 1 of each year and not later than April 15 or by May 15 of that year if **APPLICANT** has filed a

written request for an extension to file the same with that agency. In no event shall **APPLICANT'S** obligations under this paragraph constitute an affirmative act to reduce the assessed value under this Section 3(f).

7. Page 9, Section 3, Obligations of Applicant, subsection (i) Relocation Penalty, the last sentence of the first paragraph is hereby amended to read as follows:

"The annual **GRANT** payments under this Agreement shall be reduced by the amount of any penalties assessed under this Section 3(i), resulting in the maximum **GRANT** amount of \$3.9 million NPV being reduced by the corresponding amount of any such penalties."

8. Page 11, Section 4, Obligations of County, subsection (b), third subparagraph is hereby amended to read as follows:

Such **GRANT** Payments will continue until the earlier of the expiration of the term of this Agreement or until the aggregate of all payments made results in no greater than a Net Present Value of THREE MILLION NINE HUNDRED THOUSAND DOLLARS (\$3,900,000.00).

9. Page 12, Section 5, Termination and Recapture, is hereby amend to add the following additional subsection (c), to read as follows:

(c) **Failure to Commence or Substantially Complete Demolition.** In the event **APPLICANT** fails to commence demolition of buildings presently situated on the Property, to include foundational slabs, or to substantially complete such demolition work components of the Site Preparation Work within the time periods specified in Section 3 of this Agreement, **COUNTY** shall provide **APPLICANT** thirty (30) days written notice of such failure, and if **APPLICANT** fails or refuses to cure within said thirty (30) day time period, the same shall constitute an event of default under this Agreement and the **COUNTY** may take the following non-exclusive actions: (i) enforce specific performance of **APPLICANT'S** obligation with respect to demolition work hereunder, (ii) terminate this Agreement by written notice thereof to **APPLICANT**, whereupon the obligations of both parties shall cease, and recapture from **APPLICANT** any and all previously awarded grant payments pursuant to the provisions of Section 7 below; or (iii) pursue other remedies available to the **COUNTY** at law or in equity.

10. Page 18, Section 9. Miscellaneous Provisions, subsection (k) Grant Period, is hereby amended in its entirety to read as follows:

(k) **Grant Period.** The Grant Period (the "Grant Period") shall commence upon the date that is twelve (12) months following the issuance of the first Certificate of Occupancy to the first lessee or user in the **LIFESTYLE COMPONENT**, which must occur no later than ninety-six (96) months following the Effective Date. If the Grant Period as defined herein has not commenced after ninety-six (96) months following the Effective Date, the **COUNTY** shall have the right to terminate this

Agreement by providing to **APPLICANT** thirty (30) day written notice of such termination.

11. **Contingency.** Reference is hereby made to that certain Chapter 380 Economic Development Agreement between Applicant (successor-in-interest to Hawkins Regency, LLC) and City of El Paso, Texas ("**CITY**") dated November 6, 2008 (the "**380 AGREEMENT**"). County hereby acknowledges that Applicant is pursuing a first amendment to the 380 Agreement to reflect the same changes set forth in this First Amendment. It shall be a condition precedent to Applicant's obligations under this First Amendment that City shall have approved and executed a first amendment to the 380 Agreement similar to this First Amendment and otherwise in form and substance reasonably satisfactory to Applicant on or before July 20, 2010. If the foregoing condition is not timely satisfied, Applicant may elect, in its sole discretion and upon written notice to County, to proceed under the terms and conditions of this First Amendment, or terminate this First Amendment, in which event County and Applicant will revert to the Agreement as if this First Amendment had never been executed.

Except as amended herein, the Agreement between **COUNTY** and **APPLICANT** shall remain in full force and effect.

IN WITNESS WHEREOF, COUNTY and APPLICANT have executed this First Amendment to the Agreement as of the date first written above.

COUNTY OF EL PASO:

County Judge Anthony Cobos

APPROVED AS TO FORM:

Assistant County Attorney

APPROVED AS TO CONTENT:

County Contract Administrator

APPLICANT:

HAWKINS CENTER LP,
a Texas limited partnership

By: Hawkins Center GP, LLC,
a Texas limited liability company
Its: General Partner

By: _____
Name (Printed): _____
Title: _____

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on the ____ day of _____, 2010, by Honorable Anthony Cobos, as County Judge of the County of El Paso, Texas, on behalf of the County of El Paso, Texas (**COUNTY**).

Notary Public, State of Texas

My Commission Expires:

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on the ____ day of _____, 2010, by _____, as _____ of Hawkins Center GP, LLC, General Partner on behalf of Hawkins Center LP, a limited partnership, organized and existing under the laws of the State of Texas (**APPLICANT**).

Notary Public, State of Texas

My Commission Expires:
