

**CITY OF HUTTO / THE CROSSINGS OF CARMEL CREEK
ECONOMIC DEVELOPMENT AGREEMENT**

This Economic Development Agreement (this "**Agreement**") is made by and between the City of Hutto, Texas, a Texas home-rule city (the "**City**"), and ACD-GREP II Hutto Real Estate, LLC, a Delaware limited liability company ("**Developer**").

RECITALS

WHEREAS, Developer desires to construct and develop approximately four hundred sixty-six (466) acres within the City of Hutto (collectively, the "**Project**"), which is shown on **Exhibit "A,"**

WHEREAS, Developer has advised the City that a contributing factor that would induce Developer to develop the Project would be an agreement with the City to provide a performance-based economic development grant to Developer to defray a portion of the costs to be incurred by Developer as a consequence of developing and constructing certain public infrastructure items and amenities to benefit the City and the Project; and

WHEREAS, the City Council of the City of Hutto has found and determined that the construction of the Project will further the public interest and welfare and that the potential economic benefits that will accrue to the City from the Project are consistent with the City's economic development objectives to increase sales and other tax revenues within the City, attract additional jobs and promote or develop new business enterprises.

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 agree as follows:

ARTICLE 1
AUTHORITY AND PURPOSE

This Agreement is authorized by Article III, Section 52-a of the Texas Constitution, Section 380.001 of the Texas Local Government Code and Section 351.101 of the Texas Tax Code. The City's execution of this Agreement constitutes a valid and binding obligation of the City and Developer's execution and performance of this Agreement constitutes a valid and binding obligation of Developer. The City acknowledges that Developer is acting in reliance upon the City's performance of its obligations under this Agreement in making its decision to commit substantial resources and money to develop the Project.

ARTICLE 2
DEFINITIONS

"**Agreement**" means this agreement and all attachments hereto.

"**Available Sales Tax**" means twenty-five (25%) of the Sales Tax Revenues.

"**Available Hotel Occupancy Tax**" means thirty percent (30%) of the Hotel Occupancy Tax Revenues.

"**Developer**" means ACD-GREP II Hutto Real Estate, LLC, a Delaware limited liability company, or any successor thereto or assignee thereof under this Agreement.

"**Grant Payments**" means collectively, the Sales Tax Grant Payments and the Hotel Occupancy Tax Grant Payments.

"**Hotel Occupancy Tax Fund**" means the fund or subaccount established by the City pursuant to Article 4 Section B.

"**Hotel Occupancy Tax Grant Payments**" means the grant payments made to Developer by the City from its hotel occupancy tax revenues as set forth in Article 4.

"**Hotel Occupancy Tax Revenues**" means the amount of hotel occupancy tax collected by the City arising from the Project and shall include any taxes authorized by the State in the future which are intended to replace hotel occupancy tax revenues currently available to the City. At present, the City imposes a seven percent (7%) municipal hotel occupancy tax pursuant to Texas Tax Code §351.002 and §351.003. If the City ever elects to charge less than a seven percent (7%) hotel occupancy tax but is allowed by law to collect a hotel occupancy tax of seven percent (7%) or more, then instead of being based on actual collections, the Hotel Occupancy Tax Revenues shall be deemed to be computed as if the City did elect to charge a seven percent (7%) hotel occupancy tax.

"**Improvements**" means the infrastructure and amenities described on **Exhibit "B."**

"**PUD**" means the Crossings of Carmel Creek Planned Unit Development.

"**Sales Tax Fund**" means the fund or subaccount established by the City pursuant to Article 3 Section B.

"**Sales Tax Grant Payments**" means the performance based economic development grant payments made to Developer by the City from its sales tax revenues as set forth in Article 3.

"**Sales Tax Revenues**" means the amount of retail sales tax (including sales tax on theater and entertainment venue ticket sales) collected by the City arising solely from the Project, and shall include any taxes authorized by the State in the future which are intended to replace sales or use tax revenues currently available to the City. At present, the City imposes a one and one-half percent

(1½%) municipal sales tax pursuant to Texas Tax Code §321.101(a) and §321.103. If the City ever elects to charge less than a one and one-half percent (1½%) sales tax but is allowed by law to collect a sales tax of one and one-half percent (1½%) or more, then instead of being based on actual collections, the Sales Tax Revenues shall be deemed to be computed as if the City did elect to charge a one and one-half percent (1½%) sales tax.

"State" means the State of Texas.

ARTICLE 3
CITY'S DUTY TO MAKE SALES TAX GRANT PAYMENTS

- A. General Statement. The City agrees to make Sales Tax Grant Payments to Developer solely from Sales Tax Revenues received by the City as provided in this Article.
- B. Sales Tax Fund Deposits. The City shall establish a separate fund, including subaccounts if necessary, or a subaccount of any existing fund or account in the City treasury into which all Available Sales Tax shall be deposited as promptly as practical following receipt thereof by the City (the "**Sales Tax Fund**"). The City shall provide to Developer a quarterly statement indicating all deposits to and withdrawals from the Sales Tax Fund during the preceding quarter and the balance then held in such Fund.
- C. Sales Tax Grant Payments. To the extent now or hereafter permitted by law, the City shall pay to Developer, by not later than the tenth business day following the end of each quarter, all monies then available in the Sales Tax Fund, less reasonable administrative expenses incurred by the City in connection with this Agreement, as reimbursement to Developer for a portion of the costs and expenses related to the design and construction of the Improvements (the "**Sales Tax Grant Payments**"). The City covenants and agrees that it will make all such payments without counterclaim or offset.
- D. Conditions to Receipt of Sales Tax Grant Payment. Sales Tax Grant Payments hereunder shall be subject to the conditions set forth on **Exhibit "C."** The failure of Developer to comply with any condition in this Agreement shall be a default by Developer under Article 6.
- E. Term of Sales Tax Fund Deposits and Sales Tax Grant Payments. The City shall make deposits of Available Sales Tax arising from the Project to the Sales Tax Fund commencing when it receives the first Available Sales Tax from the Project collected by or accruing to the City after January 1, 2010, and continuing thereafter for all such Available Sales Tax collected by or accruing to the City until December 31, 2029.

- F. Obtaining Sales and Use Tax Information. Developer agrees and covenants to include as a condition or covenant filed as a deed restriction, language which requires each of the owners of any property within the PUD and their respective tenants to sign documentation necessary to authorize the State Comptroller's Office to release and disclose to the City any and all sales tax information relating to such owner's or tenant's businesses generating sales and use tax within the PUD, including, as necessary a form in materially the same form as that attached hereto as **Exhibit "D."** The City shall maintain the confidentiality of all information provided to it under this Section F, to the greatest extent permitted by applicable law.

ARTICLE 4

CITY'S DUTY TO MAKE HOTEL OCCUPANCY TAX GRANT PAYMENTS

- A. General Statement. The City agrees to make Hotel Occupancy Tax Grant Payments to Developer solely from Hotel Occupancy Tax Revenues received by the City as provided in this Article.
- B. Hotel Occupancy Tax Fund Deposits. The City shall establish a separate fund, including subaccounts if necessary, or a subaccount of any existing fund or account in the City treasury into which all Available Hotel Occupancy Tax shall be deposited as promptly as practical following receipt thereof by the City (the "**Hotel Occupancy Tax Fund**"). The City shall provide to Developer a quarterly statement indicating all deposits to and withdrawals from the Hotel Occupancy Tax Fund during the preceding quarter and the balance then held in such Fund.
- C. Hotel Occupancy Tax Grant Payments. To the extent now or hereafter permitted by law, the City shall pay to Developer, by not later than the tenth business day following the end of each quarter, all monies then available in the Hotel Occupancy Tax Fund as reimbursement to Developer for the costs and expenses that are permitted under Section 351.101(a)(1)-(5) of the Texas Tax Code (the "**Permitted Costs**") paid by Developer which have not theretofore been reimbursed to Developer pursuant hereto (the "**Hotel Occupancy Tax Grant Payments**"). The City covenants and agrees that it will make all such payments without counterclaim or offset.
- D. Condition to Receipt of Hotel Occupancy Tax Grant Payment. Developer shall submit to the City, by not later than November 1 of each year, a budget of the Permitted Costs which are to be incurred and paid by Developer during the ensuing calendar year (the "**Budget**"). The City shall review and approve the Budget by not later than December 15 of each year. Developer shall submit to the City, by not later than the third business day following the end of each quarter during such ensuing calendar year, (i) evidence of the Permitted Costs paid by Developer during the preceding quarter and (ii) a certificate signed by Developer setting forth the total amount of Permitted Costs not theretofore reimbursed to Developer pursuant hereto.

- E. Term of Hotel Occupancy Tax Fund Deposits and Hotel Occupancy Tax Grant Payments. The City shall make deposits of Available Hotel Occupancy Tax from each developed hotel within the Project to the Hotel Occupancy Tax Fund commencing when it receives the first Available Hotel Occupancy Tax from each such hotel collected by or accruing to the City after January 1, 2010, and continuing thereafter for all such Available Hotel Occupancy Tax collected by or accruing to the City until December 31, 2029.

ARTICLE 5
LIMITATION OF SOURCE OF PAYMENT

The obligation of payment of money by the City to Developer under this Agreement is limited to the Grant Payments. This Agreement shall create no obligation of the City which is payable from taxes or other moneys of the City other than the Available Sales Tax and Available Hotel Occupancy Tax contemplated by this Agreement which are actually collected by the City. Upon payment by City to Developer of all Grant Payments owing under Article 3 and Article 4, this Agreement shall terminate and thereafter Developer shall not be entitled to any further payments hereunder.

ARTICLE 6
DEFAULT

- A. Default and Remedies. If either the City or Developer should default in the performance of any obligations under this Agreement, the other party shall provide such defaulting party written notice of the default, and a reasonable period (of not less than thirty (30) days) to cure such default, prior to instituting an action for breach or pursuing any other remedy for default. If the City remains in default after notice and opportunity to cure, Developer shall have the right to pursue any remedy at law or in equity for the City's breach. If Developer remains in default after notice and opportunity to cure, the City's remedy shall be limited to a termination of this Agreement and any Grant Payments after the date of such termination, and Developer shall be entitled to receive and retain, and the City shall be obligated to pay, all Grant Payments which have accrued before the date of such termination. Any Grant Payment due from the City to Developer which is not timely paid by the City shall accrue interest at the rate of 6% per annum from the date such Grant Payment is due until paid.
- B. Force Majeure. The time for performance of each obligation of Developer under this Agreement, including the conditions set forth on **Exhibit "C,"** shall be extended by any period of time arising out of a Force Majeure Event. "Force Majeure Event" shall mean adverse weather conditions, fire or other casualty, labor disputes, national emergencies, riots, acts of God, or other unforeseen circumstances or events beyond the reasonable control of Developer; provided, however, that, upon the occurrence of any such event, Developer shall notify the City within thirty (30) days after such

occurrence, and when such event has ended shall notify the City within thirty (30) days after such cessation.

ARTICLE 7 AUDIT RIGHTS

Developer's books and records pertaining to the Improvements and the Budget shall be available for examination by the duly authorized officers or agents of the City, at the City's expense, during normal business hours upon request made not less than fifteen (15) business days prior to the date of such examination. Such audits shall be performed in a manner to maintain the confidentiality of the information.

ARTICLE 8 MUTUAL ASSISTANCE

The City and Developer will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement, and to aid and assist each other in carrying out such terms and provisions in order to put each other in the same economic condition contemplated by this Agreement regardless of any changes in public policy, the law, or taxes or assessments attributable to the Project. If, during the term of this Agreement, State law applicable to municipal taxation changes either in the form of sales tax or hotel occupancy tax, and as a result, the Grant Payments differ from the amount which would have been paid to Developer under the laws in effect as of the date of this Agreement, then the parties agree to adjust the Grant Payments using whatever discretionary taxes and revenues that are legally available to the City which can be allocated to the Grant Payments, so as to achieve the same economic benefits to Developer as would have resulted had the law not changed. However, this Article is not intended to require the City to use ad valorem tax revenues or funds from other sources which are not within the City's discretion to allocate to the Project.

ARTICLE 9 PERSONAL LIABILITY OF PUBLIC OFFICIALS

To the extent permitted by State law, no employee of the City, or any councilmember or agent of the City, shall be personally responsible for any liability arising under or growing out of this Agreement.

ARTICLE 10 LAW TO BE OBSERVED

Developer at all times shall observe and comply with all applicable laws, ordinances, orders and regulations of any federal, state, county or city government.

ARTICLE 11
INFORMATION

Developer shall, at such times and in such forms as the City may require, furnish periodic information concerning the status of the Project and the performance of Developer's obligations under this Agreement, and such other statements, certificates and approvals relative to the Project as may be requested in writing by the City.

ARTICLE 12
ADDRESS AND NOTICE

All notices and communications under this Agreement shall be mailed by first-class mail or delivered to Developer at the following address:

William M. Sulzbacher
ACD-GREP II Hutto Real Estate, LLC
2008 Riverside Avenue, Suite 300
Jacksonville, Florida 32204

with a copy to:

Wm. Terry Bray
Graves, Dougherty, Hearon & Moody
P.O. Box 98
Austin, Texas 78767

All notices and communications under this Agreement shall be mailed by first-class mail or delivered to the City at the following address:

City Administrator
City of Hutto
401 West Front St
Hutto, Texas 78634

Either party may designate a different addressee or address by sending notice as aforesaid.

ARTICLE 13
APPLICABLE LAWS

THIS AGREEMENT IS MADE SUBJECT TO THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS, AND SHALL BE PERFORMABLE IN WILLIAMSON COUNTY, TEXAS.

ARTICLE 14
CAPTIONS

The captions at the beginning of the Articles and Sections of this Agreement are guides and labels to assist in locating and reading such provisions, and, therefore, will be given no effect in construing this Agreement and shall not be restrictive of the subject matter of any Article, Section or part of this Agreement.

ARTICLE 15
SUCCESSORS AND ASSIGNS

Developer may not assign any or all of its rights and authority as Developer hereunder to any person or entity without the written consent of the City, which shall not be unreasonably withheld. Conveyance by Developer of a property interest alone shall not constitute an assignment of Developer's rights and authority as Developer hereunder. This Agreement shall bind and benefit the respective parties and their legal successors and permitted assigns.

ARTICLE 16
TERM

This Agreement shall become effective upon the execution hereof by all parties and shall end on December 31, 2029, except as to matters arising hereunder prior to such date.

ARTICLE 17
AMENDMENT OR MODIFICATIONS

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

ARTICLE 18
COUNTERPARTS

This Agreement 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.

ARTICLE 19
EARLY TERMINATION

For the calendar year 2020, the Sales Tax Revenues shall be at least \$1,800,000.00 (the "Sales Tax Threshold"), and the Hotel Occupancy Tax Revenues shall be at least \$600,000.00 (the "HOT Threshold"). If the Sales Tax Threshold is not met, the City may terminate Article 3 of this Agreement and all other provisions shall continue. If the HOT Threshold is not met, the City may terminate Article 4 of this Agreement and all other provisions shall continue. If neither Threshold is met the City may terminate this Agreement.

