



CITY OF BAYTOWN

OFFICE OF THE CITY CLERK

2401 Market Street
P.O. Box 424
Baytown, Texas 77522-0424
(281) 420-6504

June 27, 2016

Golden Steves

Cohen & Gordon LLP

Attn.: Victoria Gonzalez

300 Convent Street, Suite 2600

San Antonio, Texas 78205

Ref: *First Amendment to Chapter 380 Economic Development Agreement (the "Agreement" by and between HEB Grocery Company, LP ("HEB") and the City of Baytown*

Dear Ms: Gonzalez:

Pursuant to City of Baytown Ordinance 13,221 passed on June 23, 2016 by the City Council, City of Baytown, please find enclosed copy the above noted Agreement for your reference.

If our office may be of further assistance to you, please do not hesitate in contacting our Administration Department at 281-420-6500.

Respectfully,


Sylvia Aguilar
Office of the City Clerk

Enclosure

cc: Legal Department w/c

**FIRST AMENDMENT TO
CHAPTER 380
ECONOMIC DEVELOPMENT AGREEMENT**

This FIRST AMENDMENT TO CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT (this "*Amendment*"), is made and entered into as of the Effective Date (as defined below), by and between HEB GROCERY COMPANY, LP, a Texas limited partnership ("*DEVELOPER*") and the CITY OF BAYTOWN, TEXAS, a home rule city and municipal corporation (the "*CITY*"). DEVELOPER and the CITY are sometimes referred to herein collectively as the "*Parties*" and each individually as a "*Party*." All capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Agreement (or in the exhibits attached thereto).

RECITALS:

WHEREAS, the Parties entered into that certain Chapter 380 Economic Development Agreement (the "*Agreement*") dated effective as of May 26, 2016; and

WHEREAS, the Parties now desire to amend the Agreement as hereinafter provided; and

WHEREAS, the City has also authorized execution of that certain Development Agreement for Santavy Road (the "*Road Contract*"), between DEVELOPER, CITY and a third party developer; and

WHEREAS, the terms "*Intersection Improvements*," "*Utility Improvements*," and "*Santavy ROW*" used in this Amendment shall have the meanings provided in the Road Contract;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties hereby agree as follows:

1. **Santavy Road.** Notwithstanding anything in the Agreement to the contrary, the Parties hereby expressly acknowledge and agree that the construction of (i) Santavy Road (and any improvements pertaining thereto, including but not limited to, the Intersection Improvements) and (ii) any water, sanitary sewer or storm sewer lines to be included within the Santavy ROW (including, but not limited to, the Utility Improvements) shall not be a condition to DEVELOPER's receipt of the incentives to be provided by the CITY pursuant to the Agreement. Should the DEVELOPER fail to construct (i) Santavy Road (and any improvements pertaining thereto, including but not limited to, the Intersection Improvements) and (ii) any water, sanitary sewer or storm sewer lines to be included within the Santavy ROW (including, but not limited to, the Utility Improvements) in accordance with the Agreement and the Road Contract, the City shall be relieved from constructing those City Infrastructure Improvements pertaining to Santavy Road.

2. **Maximum Payment.** Until such time as the Santavy Road Condition (as defined below) is satisfied, the Maximum Payment shall be reduced by SIX HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$650,000.00) so that the Maximum Payment shall be TWO MILLION ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$2,100,000.00). For purposes hereof, the "*Santavy Road Condition*" shall be deemed satisfied at such time as Developer constructs (i) Santavy Road (and any improvements pertaining thereto, including but not limited to, the Intersection Improvements) and (ii) any water, sanitary sewer or storm sewer lines to be included

within the Santavy ROW (including, but not limited to, the Utility Improvements) in accordance with the Agreement and the Road Contract. At such time as the Santavy Road Condition is satisfied, the Maximum Payment shall increase to TWO MILLION SEVEN HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$2,750,000.00).

3. **Economic Development Grant.** Until such time as the Santavy Road Condition is satisfied, the annual Economic Development Grant shall be reduced by SIXTY-FIVE THOUSAND AND NO/100 DOLLARS (\$65,000.00) (such reduction referred to herein as an “***ED Grant Reduction***”) so that the Economic Development Grant shall be EIGHTY-FIVE THOUSAND AND NO/100 DOLLARS (\$85,000.00) per year. At such time as the Santavy Road Condition is satisfied, the Economic Development Grant shall increase to ONE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$150,000.00) per year; and within thirty (30) days after the Santavy Road Condition is satisfied, the CITY shall pay to DEVELOPER an additional one-time payment equal to the amount of all ED Grant Reductions under the Agreement.

4. **Other Terms.** All other terms, conditions and provisions of the Agreement are hereby ratified and confirmed and shall remain in full force and effect as of the date thereof, except as expressly modified hereby.

5. **Counterparts.** This Amendment may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which taken together shall constitute but one and the same instrument.

6. **Binding Effect.** This Amendment shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

[SIGNATURE PAGES FOLLOW]

EXECUTED to be effective as of the last date executed by any Party below (the "Effective Date").

CITY:

CITY OF BAYTOWN, TEXAS

R. Davis

RICHARD L. DAVIS, City Manager

042516
(Date)

ATTEST:

Leticia Brysch

LETICIA BRYSCH, City Clerk

APPROVED AS TO FORM:

Ignacio Ramirez, Sr.
IGNACIO RAMIREZ, SR. City Attorney



DEVELOPER:

HEB GROCERY COMPANY, LP,
a Texas limited partnership

[Handwritten initials]

Todd A. Piland

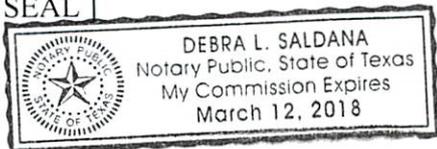
By: Todd A. Piland
Its: Executive Vice President

(Date)

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

The foregoing instrument was acknowledged before me on this 23rd day of June 2016, by Todd A. Piland, the Executive Vice President of HEB GROCERY COMPANY, LP, a Texas limited partnership, on behalf of said limited partnership.

[SEAL]



Debra L. Saldana

Notary Public of Texas

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 2

Complete Nos. 1 - 4 and 6 if there are interested parties.
 Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

**OFFICE USE ONLY
 CERTIFICATION OF FILING**

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.
 HEB Grocery Company, LP
 San Antonio, TX United States

Certificate Number:
 2016-73222

Date Filed:
 06/20/2016

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.
 City of Baytown

Date Acknowledged:
6/27/2016

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

06232016
 First Amendment to Chapter 380 Economic Development Agreement

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Butt, Charles C.	San Antonio, TX United States	X	
	Crook, Eleanor B.	San Marcos, TX United States	X	
	Butt, III, Howard E.	San Antonio, TX United States	X	
	Butt, Stephen W.	Fort Worth, TX United States	X	
	Boyan, Craig L.	San Antonio, TX United States	X	
	Lindquist, Judith A.	San Antonio, TX United States	X	
	Otto, Martin H.	Austin, TX United States	X	
	Piland, Todd A.	San Antonio, TX United States	X	
	Rose, John	Dallas, TX United States		X
	Baker, Karl P.	San Antonio, TX United States		X
	Jacobson, III, Grant H.	San Antonio, TX United States		X

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

2 of 2

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY CERTIFICATION OF FILING

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

HEB Grocery Company, LP
San Antonio, TX United States

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2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

City of Baytown

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3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

06232016
First Amendment to Chapter 380 Economic Development Agreement

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary

5 Check only if there is NO Interested Party.

6 AFFIDAVIT



I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.

[Handwritten Signature]

Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said Stephen L. Golden, this the 20th day of June, 2016, to certify which, witness my hand and seal of office.

Katherine L. Gunn
Signature of officer administering oath

Katherine L. Gunn
Printed name of officer administering oath

Notary Public
Title of officer administering oath