

RESOLUTION NO. 2005- 166 R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, APPROVING AMENDMENT NO. 2 TO THE ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE CITY, SAN MARCOS FACTORY STORES, LTD. AND PRIME OUTLETS SAN MARCOS. L.P. RELATED TO AN EXPANSION AND RENOVATION PROJECT AT PRIME OUTLETS AT SAN MARCOS; AUTHORIZING THE CITY MANAGER TO SIGN THE AMENDMENT; AND DECLARING AN EFFECTIVE DATE.

RECITALS:

1. The City, San Marcos Factory Stores, Ltd. ("SMFS"), and Prime Outlets at San Marcos II, L.P. ("POSM") entered into an Agreement approved by the City Council in Resolution 2004-169R, for the purpose of facilitating a project (the "Project") to renovate and expand Prime Outlets at San Marcos, the existing retail facility owned by SMFS and POSM in the City.

2. Prime Outlets at San Marcos, together with Tanger Factory Outlets, has for several years been among the most popular tourist destinations in the State of Texas, and generates significant sales and use tax revenues for the City.

3. SMFS and POSM recently submitted a proposal to the City for increasing the scale of the Project, and a request to increase the City's sales tax incentive payments related to the Project based on the increase in the Project's scale and the provision of an area to the City for use as a Tourist Information Center.

4. The City Council wishes to approve an amendment to the Agreement under which SMFS and POSM will increase the scale of the Project and make an area of the Project available to the City for use as a Tourist Information Center, and the City will increase its sales tax incentive payments to SMFS and POSM based on the increase in the Project's scale and the provision of an area to the City for use as a Tourist Information Center, and certain other clarifying amendments will be made to the Agreement.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:

PART 1. The attached Amendment No. 2 to the Economic Development Agreement between the City, San Marcos Factory Stores, Ltd. and Prime Outlets San Marcos, L.P. is approved.

PART 2. The City Manager, Dan O'Leary, is authorized to execute the attached Amendment on behalf of the City.

PART 3. This Resolution is in full force and effect upon its adoption.

ADOPTED on November 1, 2005.

Susan Narvaiz

Susan Narvaiz
Mayor

Attest:

Janis K. Womack

Janis K. Womack
City Clerk

**AMENDMENT NO. 2 TO ECONOMIC DEVELOPMENT
AGREEMENT BETWEEN THE CITY OF SAN MARCOS, SAN
MARCOS FACTORY STORES, LTD., AND PRIME OUTLETS AT
SAN MARCOS II, L.P. FOR EXPANSION AND RENOVATION OF
RETAIL COMMERCIAL FACILITY**

This is Amendment No. 2 to the Economic Development Agreement (the "Agreement") entered into on September 27, 2004 (the "Effective Date") between the City of San Marcos, Texas (the "City"), a Texas municipal corporation, San Marcos Factory Stores, Ltd. ("SMFS"), a Texas limited partnership, and Prime Outlets at San Marcos II, L.P. ("POSM"), a Delaware limited partnership. San Marcos Factory Stores, Ltd. and Prime Outlets at San Marcos II, L.P. are sometimes referred to collectively in this Agreement as "Prime".

RECITALS

1. The City, SMFS and POSM entered into the Agreement pursuant to a program of the City under Chapter 380 of the Texas Local Government Code, for the purpose of facilitating a project (the "Project") to renovate and expand Prime Outlets at San Marcos, the existing retail facility owned by SMFS and POSM in the City.

2. Prime Outlets at San Marcos, together with Tanger Factory Outlets, has for several years been among the most popular tourist destinations in the State of Texas, and generates significant sales and use tax revenues for the City.

3. SMFS and POSM recently submitted a proposal to the City for increasing the scale of the Project and making an area of the Project available to the City for use as a Tourist Information Center, and a request to increase the City's sales tax incentive payments related to the Project based on the increase in the Project's scale and the provision of an area to the City for use as a Tourist Information Center.

4. The City Council wishes to approve an amendment to the Agreement under which SMFS and POSM will increase the scale of the Project and make an area of the Project available to the City for use as a Tourist Information Center, and the City will increase its sales tax incentive payments to SMFS and POSM based on the increase in the Project's scale and the provision of an area to the City for use as a Tourist Information Center, and certain other clarifying amendments will be made to the Agreement.

AMENDMENT

The City, SMFS and POSM agree to amend the Agreement as follows:

- 1) The attached Exhibit A, depicting a revised *Facility Expansion Area* for the Project, will replace the version of Exhibit A that was originally attached to the Agreement.
- 2) The definition of "Sales Tax Deficiency" in Article 1 of the Agreement is amended as

follows (underlining indicates added text; ~~overstrike~~ indicates deleted text):

Sales Tax Deficiency means, for the first Annual Period, the amount, if any, by which the Facility Sales Taxes for that Annual Period are less than the Facility Sales Taxes for the calendar year 2004. For each remaining Annual Period, *Sales Tax Deficiency* means the amount, if any, by which the Facility Sales Taxes for that Annual Period are less than the Facility Sales Taxes for the immediately preceding Annual Period.

3) Section 2.01 of the Agreement is amended as follows (underlining indicates added text; ~~overstrike~~ indicates deleted text):

Section 2.01. Prime agrees to construct the Project ~~to~~ at a total estimated cost of \$46,000,000. Phase I of the Project will consist of the demolition of approximately 70,000 square feet of existing buildings, and the construction of the Facility Expansion at least 154,779 square feet of new retail merchandising, storage and office space located on the Facility Expansion Area, together with appurtenances including terraces, fountains, walkways, landscaping and parking and driveway areas, ~~at an estimated cost of \$20,000,000. Prime agrees that the Facility Expansion will consist of at least 154,779 square feet of new retail merchandising, storage and office space located on the Facility Expansion Area.~~ Prime agrees to commence the construction of the Project on or before December 31, 2004, and to complete the construction of Phase I of the Project on or before December 31, 2005. Phase II of the Project will consist of the construction of at least 73,000 square feet of new retail merchandising, storage and office space located on the Facility Expansion Area, together with appurtenances including terraces, fountains, walkways, landscaping and parking and driveway areas. Prime agrees to complete the construction of Phase II of the Project on or before July 31, 2006. Prime agrees to ensure that all of the construction and renovation work related to the Project conforms to all applicable City ordinances and regulations, including but not limited to the City's Master Plan, and Chapter 14-Buildings and Building Regulations, Chapter 86-Utilities, ~~Chapter 94-Development Standards, Chapter 110-Subdivisions, and Chapter 114-Zoning,~~ of the San Marcos City Code, and applicable provisions of the City's Land Development Code (subject to Section 3.08 below).

4) Section 2.07 is added to the Agreement to read as follows:

Section 2.07. Prime agrees to construct, as part of Phase II of the Project, and to thereafter provide for the use of the City for a period of ten years from the completion of Phase II of the Project, a space within or adjacent to the Food Court area of the Facility at least 625 square feet in size to serve as a Tourist Information Center, at no rental cost to the City. Prime will finish out this area to the City's reasonable specifications as part of Phase II of the Project. Prime agrees to negotiate and execute with the City a lease of this area to the City for the ten-year period. The City may sublease the Tourist Information Center area to an organization such as the San Marcos Area Chamber of Commerce with the approval of Prime.

5) Section 3.05 of the Agreement is amended as follows (underlining indicates added text; ~~overstrike~~ indicates deleted text):

Section 3.05. The total of all Grant Payments made by the City to Prime will not exceed \$3,000,000 ~~\$2,500,000~~. In other words, if the total of all Grant Payments reaches this amount before the end of the Grant Payment Period, Prime's obligation to submit further Grant Payment Requests will cease, and the City's obligation to make further Grant Payments will cease. If the total of all Grant Payments owed by the City to Prime for all Annual Periods during the Grant Payment Period is less than \$3,000,000 ~~\$2,500,000~~, the City will not be obligated to make any further Grant Payments to Prime.

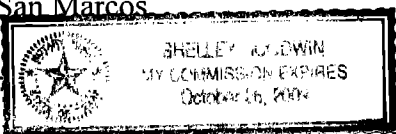
All remaining terms and conditions of the Agreement shall remain in full force and effect for the duration of the Agreement. By signing this amendment, the parties understand and agree that this amendment will become a part of the Agreement.

This amendment is effective this 1 day of November, 2005.

CITY OF SAN MARCOS, TEXAS

By: [Signature]
Dan O'Leary, City Manager

This instrument was acknowledged before me on November 1, 2005 by Dan O'Leary, known personally by me to be the City Manager of the City of San Marcos, on behalf of the City of San Marcos.

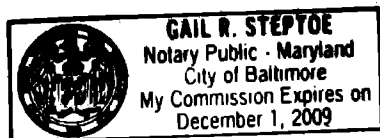
Notary seal: 

[Signature]
Notary Public, State of Texas

San Marcos Factory Stores, Ltd.

By: [Signature]
Signature
Robert A. Bruenik, Authorized Signatory
Printed name, title

This instrument was acknowledged before me on January 4, ²⁰⁰⁷2005 by Robert A. Bruenik, known personally by me to be the Authorized Signatory of San Marcos Factory Stores, Ltd., on behalf of that partnership.



[Signature]

Notary Seal:

Notary Public, State of _____

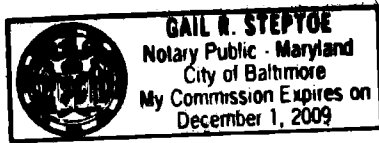
Prime Outlets at San Marcos II, L.P.

By: *Robert A. Bruenik*
Signature

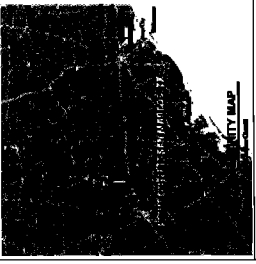
Robert A. Bruenik, Authorized Signatory
Printed name, title

This instrument was acknowledged before me on January 4, ²⁰⁰⁷2005 by Robert A. Bruenik, known personally by me to be the Authorized Signatory of Prime Outlets at San Marcos II, L.P., on behalf of that partnership.

Notary Seal:



Gail R. Steptoe
Notary Public, State of _____



Project of:
PRIME RETAIL, L.P.
 217 E. REDWOOD STREET
 20 TH FLOOR
 Baltimore, Maryland 21002
 (410)234-0782

We are negotiating with the stores listed and certain stores are reviewing leases. All other stores are under contract. The listed stores will be open in the center. The listed stores please note conditions and dimensions are subject to change. All dimensions are approximate and subject to change. All dimensions are required to verify all existing conditions and actual dimensions.

PRIME OUTLETS SAN MARCOS, TX

NO.	REVISION	DATE

SHEET TITLE
**EXHIBIT
 PLAN
 1 OF 1**

SCALE: N.T.S.
 DRAWING NUMBER
L1

