

This Instrument was Prepared By:  
**Donald J. Doody, Esquire**  
GOREN, CHEROF, DOODY & EZROL, P.A.  
3099 East Commercial Boulevard, Suite 200  
Fort Lauderdale, Florida 33308

## **FIRST AMENDMENT TO THE CONSTRUCTION LOAN AGREEMENT**

THIS FIRST AMENDMENT TO THE CONSTRUCTION LOAN AGREEMENT ("First Amendment") is made on this \_\_\_\_ day of May, 2022 by and between **Hatcher Construction & Development, Inc., a Florida corporation** (hereinafter the "Borrower"), **William E. Hatcher**, individually and **Jeff K. Hatcher**, individually (hereinafter collectively the "Guarantors") and the **Delray Beach Community Redevelopment Agency**, a Florida body corporate and politic created pursuant to Section 163.356 F.S. (hereinafter the "DBCRA").

### W I T N E S S E T H

1. Amended and Restated Promissory Note. The Loan which consists, as of this date, of an outstanding indebtedness in the amount of \$279,287.10 dollars evidenced by a Promissory Note in the original amount of \$1,400,000.00 Dollars dated February 9, 2022, together with the revised repayment terms, as evidenced in the Amended and Restated Promissory Note in the total amount of \$1,400,000.00 Dollars executed simultaneously herewith, which will be payable in the following terms:

1.1 Interest. Interest will accrue at the rate of three percent (3 %) per annum on all draw amounts received by Borrower.

1.2 Commencing on May 1, 2022, and each consecutive month thereafter, Borrower shall make interest only monthly payments on this Amended Note at an interest rate of three percent (3.00%) per annum on the total of all draw amounts received by Borrower until such time as Borrower receives a Certificate of Occupancy and provide a Final Release of Lien and Contractor's Affidavit and Waiver of Lien reasonably satisfactory to the DBCRA. Commencing on the first day of each month subsequent to the Borrower's receipt of the Certificate of Occupancy, and for each consecutive month thereafter, Borrower shall make consecutive monthly payments of principal and interest based on the foregoing interest rate for a period of eighty-three (83) months shall be paid monthly until the last day of the eighty-fourth (84th) month ("Maturity Date") at which time all outstanding principal and accrued interest shall be due and payable in full. All payments of principal and interest shall be due on the first (1st) day of each month ("Due Date").

1.3 Maturity. The entire unpaid balance of principal and accrued interest but unpaid interest owing on the Amended and Restated Promissory Note will

be due and payable on the first day of the eighty-fourth (84<sup>th</sup>) month following the first month subsequent to the Borrower's receipt of the Certificate of Occupancy.

1.4 Prepayment. The Borrower shall not have a prepayment penalty.

2. Schedule of Disbursements. DBCRA shall disburse the Loan in increments to Borrower as follows:

Once the Borrower has expended its equity interest equal to twenty (20%) percent of the total cost of the project, draw requests shall be disbursed to Borrower in a minimum amount of \$50,000.00, if each draw request is accompanied by a certificate of work completed by a certified architect.

3. Collateral Security. Payment of the Amended and Restated Promissory Note will be secured by a First Leasehold Mortgage and Security Agreement previously executed and recorded February 11, 2022 in Official Records Book 33307, Page 464 of the Public Records of Palm Beach County, Florida on the two separate 2-story, 3,556 SF commercial buildings for a total of 7,112 SF of office/retail/commercial space to be built by Borrower located at 20-26 Northwest 6<sup>th</sup> Avenue, Delray Beach, Florida owned by DBCRA in Palm Beach County, Florida ("Collateral").

4. Conditions of Lending. The obligations of the DBCRA to perform this Agreement and to revise the repayment terms under the Amended and Restated Promissory Note are subject to the performance by the Borrower of the following conditions precedent:

4.1 Amended Loan Documents. The Amended Loan Documents shall have been duly executed and acknowledged (where applicable) by the appropriate parties and delivered to the DBCRA by Borrower, all in form and substance satisfactory to the DBCRA.

4.2 No Default. The representations and warranties set forth in paragraph 9 of this Agreement shall be true and correct in all material respects and there shall not have occurred and be continuing any Event of Default.

4.3 Insurance. Borrower to maintain proper insurance as referenced in the loan commitment letter from DBCRA dated October 15, 2021.

5. Construction. The Borrower shall continue to diligently prosecute the construction of the improvements in accordance with the plans and specifications, in a good and workmanlike manner and in full compliance with all requirements of any governmental authority and the appropriate board of fire underwriters or similar body

acting in and for the locality in which the Collateral is located. At such time construction commences on two separate 2-story 3,556 SF commercial buildings totaling 7,112 SF of office/retain/commercial space and ancillary uses to be built on 20 and 26 NW 6<sup>th</sup> Avenue, Delray Beach, Florida, owned by DBCRA and legally described on Exhibit "A" attached hereto and made a part hereof, Borrower shall provide that:

(a) No material changes in the plans and specifications or the other construction documents shall be effective unless reasonably approved in writing by the DBCRA. The Borrower shall obtain all additional approvals required from other Persons of any changes in the plans and specifications or the other construction documents. The DBCRA shall have twenty (20) days after receipt by it of all documentation pertaining to any change referred to in this subsection within which to evaluate any such change and will not be required to consider approving any such change unless all additional approvals which, in the DBCRA's judgment, are required from other persons have been obtained. If the DBCRA in its reasonable judgment determines that any change may materially increase the cost of the construction of the improvements, the DBCRA may require the Borrower to advance additional funds sufficient to cover such increased costs as a condition to giving it approval; and

(b) The Borrower shall promptly comply, and cause the General Contractor and each subcontractor to promptly comply, with all instructions of the Architect and the Engineer relating to the Collateral in accordance with the construction documents and the terms and conditions of this Amended Construction Loan Agreement.

(c) Contractors and Subcontractors. Upon the request of DBCRA, Borrower shall promptly furnish to the DBCRA (A) a list of all unpaid bills with respect to any work, labor or services or the furnishing of any materials, supplies or equipment in connection with the construction of the Improvements and (B) upon the request of the DBCRA, certificates or acknowledgments of payment with respect to any such work, labor or services fully performed or any such materials, supplies or equipment furnished; and

(d) Inspection and Right to Stop Work. (i) The DBCRA shall have the right at any time to enter the property and inspect the construction and all other matters relating to the construction of the improvements. The DBCRA shall also have the right to examine, copy and audit the books, records, accounting data and other documents of the Borrower relating to the construction of the Improvements; (ii) The DBCRA shall be under no duty to examine, supervise or inspect the plans and specifications or the construction of the improvements or to examine any books, records, accounting data or other documents. Any inspection or examination by the DBCRA is for the sole purpose of protecting the DBCRA's security and preserving the DBCRA's rights under this Amended Construction Loan Agreement. No default by the Borrower will be waived by any such inspection or examination. In no event will any such inspection or examination be a representation by the DBCRA that there has been or will be compliance with the plans and specifications or that the construction is free from defective materials or workmanship; and (iii) If the DBCRA in good faith believes that (A) any work or materials do not conform to the plans and specifications or sound building practice or otherwise depart from any of the

requirements of this Amended Construction Loan Agreement, (B) the consent of any person as to any aspect of the construction of the improvements is required, but has not been obtained or (C) there has occurred or existed an Event of Default, the DBCRA may require the work to be stopped and may withhold subsequent disbursements from the Amended and Restated Promissory Note until such matter is corrected. In such event, the Borrower shall promptly correct such matter. Any such action by the DBCRA shall not affect the Borrower's obligations to complete the improvements within the time frame contained in the Amended and Restated Promissory Note.

(e) **Protection Against Lien Claims.** The Borrower shall promptly pay and discharge all charges for the performance of any work, labor or services or the furnishing of any materials, supplies or equipment in connection with the construction of the improvements, and shall promptly notify the DBCRA in writing of any dispute with the General Contractor or any subcontractor, and if Borrower fails to cause the removal or bonding of such lien within ten (10) days from the date of filing, DBCRA is authorized to pay such amount by making an advance under the Amended and Restated Promissory Note necessary to cause the removal of the lien of record.

(f) The Borrower shall provide the DBCRA with a statement as to the number and types of jobs created as a result of this loan. This statement will be supplied on a semi-annual basis for the first two (2) years after closing, then on an annual basis thereafter until notified by the DBCRA that it is no longer required. However, this obligation shall expire with the full repayment of the loan.

(g) The Borrower shall hire local contractors and/or subcontractors to perform the construction work associated with the Project pursuant to the Local Employment Program, which is attached hereto as Exhibit "B", and incorporated herein by reference.

6. **Representations and Warranties.** The Borrower represents and warrants as follows:

6.1 **No Default.** The making and performance by the Borrower of this Agreement will not violate any provision or constitute a default under any indenture, agreement or instrument to which the Borrower is a party or by which the Borrower is bound or affected, the effect of which will prevent the Borrower from performing the obligations of the Borrower under the Loan Documents.

6.2 **Authorization.** The Borrower is and will continue to be a duly organized and validly existing corporation under the laws of the State of Florida and is duly qualified to do business and is in good standing under the laws of the State of Florida. The Borrower and the persons executing the Loan Documents on the Borrower's behalf are duly authorized and empowered to execute, deliver and perform the Loan Documents.

7. Affirmative Covenants. Until payment in full of the Amended and Restated Promissory Note, unless the DBCRA otherwise consents in writing, the Borrower will perform or cause to be performed the following agreements:

7.1 Notice of Change. The Borrower will give prompt written notice to the DBCRA of: (a) the occurrence of any Event of Default; (b) any other matter which has resulted in, or might result in, a material adverse change in the financial condition of the Borrower or the Secured Property; (c) change in status of Secured Property or notice of any lien or violation.

7.2 Other Information. The Borrower will furnish to the DBCRA such other information concerning the affairs of the Borrower as the DBCRA might reasonably request.

7.3 Required Insurance. The Borrower will continuously maintain in full force and effect policies of title, casualty and public liability insurance in accordance with the requirements of the Loan Documents.

7.4 The Borrower shall provide the DBCRA a statement as to the number and types of permanent jobs created as a result of this loan. This statement will be supplied on a semi-annual basis for the first two (2) years after closing, then on an annual basis thereafter until notified by the DBCRA that it is no longer required. However, this obligation shall expire with the full repayment of the Loan.

8. Negative Covenants. The Borrower agrees that until payment in full of the Amended and Restated Promissory Note, unless the DBCRA waives compliance in writing, the Borrower will not create, assume or suffer to exist any security interest, encumbrance or other lien (including the lien of an attachment, judgment or execution) securing a charge or obligation affecting the Property, excepting only: (a) liens created by the Amended Loan Documents; and (b) liens which are being contested in good faith by the Borrower through the diligent prosecution of appropriate proceedings.

9. Default. The DBCRA may terminate all obligations of the DBCRA to make any further disbursements under the Amended and Restated Promissory Note and may declare the Amended and Restated Promissory Note to be due and payable if any of the following events occur and are not remedied by the Borrower or waived by the DBCRA:

9.1 Failure by Borrower to pay within fifteen (15) days of any due date any installments of interest as required under the Amended and Restated Promissory Note. Failure by Borrower to pay prior to their delinquency any taxes, assessments, liens, or charges as required under the Leasehold Mortgage, or any insurance premiums required under Paragraph 9 herein;

9.2 Failure by Borrower to duly keep, perform, and observe any other covenant,

condition, or agreement in this Amended Construction Loan Agreement, any other instrument securing the Amended and Restated Promissory Note or any other instrument collateral to the Amended and Restated Promissory Note or executed in connection with the sums secured hereby for a period of thirty (30) days after written notice of breach. If the nature of the default is such that it cannot be cured within such thirty (30) day period, Borrower shall not be deemed to be in default hereunder so long as it proceeds in good faith and with due diligence to cure such default. Such good faith and due diligence shall be subject to the approval of the DBCRA.

9.3 The commencement of levy, execution, or attachment proceedings against Borrower or any principal thereof or Guarantors, or the application for or appointment of a liquidator, receiver, custodian, sequestrator, conservator, trustee, or other similar judicial officer, unless any such action is dismissed within thirty (30) days;

9.4 The insolvency in the bankruptcy of Borrower;

9.5 The assignment for the benefit of creditors, or the admission in writing of an inability to pay any debts generally as they become due, or the ordering, the winding-up or liquidation of his affairs, by Borrower;

9.6 The commencement of a case against Borrower, any principal or Guarantors thereof under any insolvency, bankruptcy, creditor adjustment, debtor rehabilitation or similar laws, state or federal, or the determination by any of them to request relief under any insolvency, bankruptcy, creditor adjustment, debtor rehabilitation or similar proceeding, state or federal, including without limitation the consent by any of them to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator or similar official for it or for any of its respective property or assets, and such action is not discharged within sixty (60) days after commencement;

9.7 The conveyance of any interest either legal, equitable or beneficial in the Collateral which is subject to the Mortgage. Conveyance of any interest shall include, but not be limited to, sale, lease, entering into a Contract for Deed;

9.8 Any failure to adhere to or comply with any of the terms or provisions of the First Leasehold Mortgage, the Promissory Note or the Amended and Restated Promissory Note executed by the Borrower in favor of DBCRA or its assigns, after written notice and a ten (10) day opportunity to cure;

9.9 Any failure to satisfy the obligations and responsibilities arising under that certain Ground Lease dated July 18, 2019 between Borrower and DBCRA, as amended.

10. Remedies. On the occurrence of an Event of Default identified above and the failure of the Borrower to cure or cause to be cured the same prior to the expiration of the time periods hereafter provided, in addition to any other rights and remedies which the DBCRA might hold under the terms of any one or more of the Loan Documents, the DBCRA will have the following remedies:

10.1 Acceleration. The DBCRA may, at the DBCRA's option, declare the Amended and Restated Promissory Note to be immediately due and payable and the DBCRA will be entitled to proceed to selectively and successively enforce the DBCRA's rights under the Loan Documents or any one or more of them.

10.2 Selective Enforcement. If the DBCRA elects to selectively and successively enforce the DBCRA's rights under any one or more of the Loan Documents such action will not be deemed a waiver or discharge of any other lien or encumbrance securing payment of the Amended and Restated Promissory Note until such time as the DBCRA shall have been paid in full all sums owing to the DBCRA.

10.3 Waiver of Default. The DBCRA may, by an instrument in writing signed by the DBCRA, waive any Event of Default which has occurred and any of the consequences of such Event of Default and, when so waived, the DBCRA, the Borrower and all other parties to the Loan Documents will be restored to their respective former positions, rights and obligations under the Loan Documents. Any Event of Default so waived will, for the purposes of this Agreement, be deemed to have been cured and not to be continuing, but no such waiver will extend to any subsequent or other Event of Default or impair any consequences of such subsequent or other Event of Default.

11. Miscellaneous. It is further agreed as follows:

11.1 Cumulative Remedies. No failure on the part of the DBCRA to exercise and no delay in exercising any right hereunder will operate as a waiver thereof, nor will any single or partial exercise by the DBCRA of any right hereunder preclude any other or further right of exercise thereof or the exercise of any other right.

11.2 Survival of Representations. All representations and warranties made herein will survive the making of the Loan and the delivery of the Loan Documents, but all representations and warranties made herein will terminate on payment in full of the Amended and Restated Promissory Note.

11.3 Notices. All notices, requests and demands will be served by certified mail, return receipt requested, and given by deposit in the custody of the United States Postal Service, addressed as follows:

Borrower/Borrower: William E. Hatcher, President  
Hatcher Construction & Development, Inc.  
710 W. Atlantic Ave.

Delray Beach, FL 33444

With a copy to: David W. Schmidt, Esq.  
Simon & Schmidt  
766 SE 5th Avenue  
Delray Beach, FL 33483  
561-278-2601

DBCRA: Renee Jadusingh, Executive Director  
Delray Beach Community Redevelopment Agency  
20 North Swinton Ave.  
Delray Beach, Florida 33344

With email copy to: Kim N. Phan, Legal Advisor  
Kimp@mydelraybeach.com

With copy to: Goren, Cherof, Doody & Ezrol, P.A.  
3099 East Commercial Boulevard, Suite 200  
Fort Lauderdale, Florida 33308  
Attention: Donald J. Doody, Esquire

or at such other address as any party designates for such purpose by written notice.

11.4 Construction. The Amended Loan Documents have been executed and delivered as an incident to a loan transaction negotiated and to be performed in the City of Delray Beach, Palm Beach County, Florida. The Amended Loan Documents are intended to constitute contracts made under the laws of the State of Florida and to be construed in accordance with the internal laws of Florida. The Borrower hereby consents to the jurisdiction and venue of any state or federal court sitting in Florida, in any action brought for enforcement of the Amended Loan Documents. Except for the terms defined in Paragraph 1 of this Amended Construction Loan Agreement, the descriptive headings contained in this Amended Construction Loan Agreement are for convenience only and are not intended to be used in the construction of this Amended Construction Loan Agreement. This Amended Construction Loan Agreement may be executed in multiple counterparts, each of which will be an original instrument, but all of which will constitute one agreement.

11.5 Binding Effect. This Amended Construction Loan Agreement will be binding on the Borrower, its successors and/or assigns, and the Borrower will inure to the benefit of the DBCRA, its successors and/or assigns.

12. Definition of Terms. As used in this Agreement, the following terms will have the meanings indicated:



12.1 Agreement. This Amended Construction Loan Agreement entered into by and between Hatcher Construction & Development, Inc., a Florida corporation and the DBCRA, as Lender.

12.2 Collateral. A First Leasehold Mortgage and Security Agreement recorded February 11, 2022 in Official Records Book 33307, Page 464, of the Public Records of Palm Beach County, Florida on the two separate 2-story, 3,556 SF commercial buildings for a total of 7,112 SF of office/retail/commercial space to be built by the Borrower located at 20 and 26 NW 6<sup>th</sup> Avenue, Delray Beach, Florida owned by DBCRA in the City of Delray Beach, Palm Beach County, Florida.

12.3 Default. The occurrence of one or more Events of Default, the failure of Borrower to remedy the same within the time provided in this Amended Construction Loan Agreement and the election by DBCRA to exercise one or more of DBCRA's remedies under this Amended Construction Loan Agreement.

12.4 Events of Default. The events specified in Paragraph 7 of this Amended Construction Loan Agreement.

12.5 Loan. The loan is in the total amount of \$1,400,000.00 to be made by the DBCRA to the Borrower pursuant to the terms of this Amended Construction Loan Agreement.

12.6 Loan Documents. The instruments executed and delivered by Borrower to the DBCRA to evidence and secure payment of the Loan, including but not limited to, are: (a) Amended and Restated Promissory Note; (b) Amended Construction Loan Agreement; among others.

12.7 DBCRA. Delray Beach Community Redevelopment Agency.

12.8 Loan Year. The period beginning February 9, 2022.

12.9 Borrower. Hatcher Construction & Development, Inc., a Florida corporation.

12.10 Note. The Amended and Restated Promissory Note in the face amount One Million Four Hundred Thousand and 00/100 (\$1,400,000.00) Dollars bearing the date of May \_\_\_\_, 2022 to be executed by the Borrower and delivered to the DBCRA.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement to be effective the date first above written.

**BORROWER:**

Hatcher Construction & Development, Inc.,  
a Florida corporation

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By: William E. Hatcher, President

**LENDER:**

Delray Beach Community Redevelopment  
Agency, a Florida public body corporate and  
politic created pursuant to Section 163.356  
F.S.

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By: Shirley E. Johnson, Chair

**GUARANTORS:**

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William E. Hatcher, individually

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Jeff K. Hatcher, individually

## **EXHIBIT “A”**

### **Parcel 1:**

Lot 17, Block 12, Monroe Subdivision, according to the plat thereof, recorded in Plat Book 14, Page 67, of the Public Records of Palm Beach County, Florida;

Less and Except a parcel for right-of-way purposes in Section 12, Township 46 South, Range 43 East, Palm Beach County, Florida, conveyed to the City of Delray Beach, Florida by Right-of-Way Deed recorded May 17, 2021 in O.R. Book 32491, Page 5, Public Records of Palm Beach County, Florida, more particularly described as follows:

The West 2.00 feet of Lot 17, Block 12, Monroe Subdivision, recorded in Plat Book 14, Page 67, of said Public Records.

Folio No. 12-43-46-17-01-012-0170

### **Parcel 2:**

The East 130 feet of the North 100 feet of the South 302.1 feet of the South one-half of Block 12 of the City of Delray Beach (formerly Linton) according to the Plat thereof, as recorded in Plat Book 1, Page 3, of the Public Records of Palm Beach County, Florida;

Less and Except a parcel for right-of-way purposes in Section 12, Township 46 South, Range 43 East, Palm Beach County, Florida, conveyed to the City of Delray Beach, Florida by Right-of-Way Deed recorded May 17, 2021 in O.R. Book 32491, Page 5, Public Records of Palm Beach County, Florida, more particularly described as follows:

The West 2.00 feet of the East 130 feet of the North 100 feet of the South 302.1 feet of the South one-half of Block 12, City of Delray Beach, recorded in Plat Book 1, Page 3, of said Public Records.

Folio No. 12-43-46-16-01-012-0060

## **EXHIBIT “B”**

The Delray Beach Community Redevelopment Agency, as Lender, and Hatcher Construction & Development, Inc., as Borrower, have mutually recognized the interest of the local community in creating new short-term and long-term employment opportunities for local residents as a result of this development project. Local hiring provides training and jobs to economically isolated residents. This has an immediate effect on residents’ financial well-being, and the stability of their families. The added job opportunities and experiences provide lasting skills and increase residents’ long-term earning potential. When redevelopment money, through local hiring, flows to local residents, those residents will spend much of it in the neighborhood, revitalizing the retail sector and preserving or creating additional jobs for their neighbors. The greater percentage of people living near where they work will also reduce vehicular congestion and improve the air quality both in the neighborhoods and the community as a whole.

The Lender has recognized the importance of local hiring with respect to redevelopment within the Lender’s Redevelopment Area. Specifically, Part Four, Section 3.12 – Economic Development Incentives for Job Creation of the Delray Beach Community Redevelopment Agency’s Redevelopment Plan, provides that investment within the redevelopment area “... can now be centered on the following: employment opportunities to include large-scale employers; a stronger employment base in close proximity to residents; and increased opportunities for minority business ownership in the area.”

In an effort to support the Lender’s Redevelopment Plan, and the Lender’s goals and objectives, the Borrower has indicated a willingness to work with the Lender and other community partners to achieve these goals. The Borrower shall be required to hire local subcontractor(s) to perform labor that equates to fifteen percent (15%) of the total construction cost for the Project. Local in this context shall mean the subcontractor has an office located within the municipal boundaries of the City of Delray Beach. The Borrower shall:

- Collaborate with the Lender on notifying local contractors and vendors of bid opportunities related to the construction of the Project;
- Send written notification to the Lender notifying of the process and timing of bid opportunities and/or job openings;
- Maintain records of construction related bids received by the Borrower’s announcements from Local Contractors;
- Maintain records of local persons who applied for jobs and those who were hired; and
- Documenting participation, if any, in local employment training programs.

Borrower shall reach the target goal for local employment as follows:

- During the Project construction phase: At least ten (10) bids for work or supplies are submitted by local contractors (business address or owner’s home address is within US Postal Zip Codes 33444, 33445 and 33483 within the incorporated city limits of the City of Delray Beach (“Local Contractors”).