

**CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: Office of Economic Development
AGENDA DATE: February 23, 2010 - Regular Agenda
CONTACT PERSON/PHONE: Kathryn Dodson, PhD, Director 541-4670
DISTRICT(S) AFFECTED: ALL

SUBJECT:

Discussion and action on a Resolution that the City Manager be authorized to execute a First Amendment to Chapter 380 Economic Development Program Agreement by and between the City of El Paso and Centro Mayapan, Inc., a Texas Corporation ("Applicant"), in connection with the extension and rearrangement the time and manner of repayment of the City's loan to Applicant, subject to the terms and conditions specified therein.
[All Districts] [Economic Development, Kathryn Dodson (915)541-4670]

BACKGROUND/DISCUSSION:

On June 16, 2009, City Council approved the issuance of a short-term Chapter 380 loan in the amount of \$250,000.00 to Centro Mayapan, Inc. in connection with its operation of Centro Mayapan as a commercial center on 2101 Myrtle, El Paso, Texas. The City's loan was due in full on December 31, 2009. On January 5, 2010, City Council found the loan to be in default and authorized Department staff to negotiate a loan modification to include a revised loan repayment plan and extended maturity date.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

On June 16, 2009, the Council authorized the City Manager to sign a Chapter 380 Economic Development Program Agreement between the City and Centro Mayapan, Inc. in connection with the operation of Centro Mayapan, located at 2101 Myrtle.

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

N/A

BOARD/COMMISSION ACTION:

Enter appropriate comments or N/A.

N/A

*****REQUIRED AUTHORIZATION*****

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD: *Evee Barbera for Kathryn Dodson*
(Example: If RCA is initiated by Purchasing, client department should sign also). Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to execute a First Amendment to Chapter 380 Economic Development Program Agreement by and between the City of El Paso and Centro Mayapan, Inc., a Texas Corporation ("Applicant"), in connection with the extension and rearrangement the time and manner of repayment of the City's loan to Applicant, subject to the terms and conditions specified therein.

APPROVED this ____ day of _____ 2010.

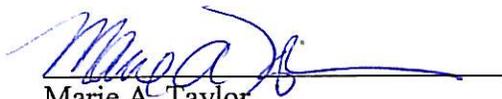
CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Marie A. Taylor
Assistant City Attorney

APPROVED AS TO CONTENT:



Kathryn B. Dodson, Ph.D., Director
Economic Development Department

**FIRST AMENDMENT TO CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM
AGREEMENT BETWEEN THE CITY OF EL PASO
AND CENTRO MAYAPAN, INC.**

This First Amendment to Chapter 380 Economic Development Program Agreement ("First Amendment") is made this _____ day of _____, 2010, by and between the **CITY OF EL PASO, TEXAS** (the "CITY") and **Centro Mayapan, Inc.** ("APPLICANT").

WHEREAS, on June 16, 2009, the CITY and APPLICANT entered into a Chapter 380 Economic Development Program and 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 City of El Paso; and

WHEREAS, pursuant to the Agreement, the CITY lent to APPLICANT a Loan in the original principal amount of \$250,000.00, evidenced by a certain promissory note (the "Note") dated June 23, 2009, which as of March 1, 2010 has a remaining unpaid principal balance in the amount of \$238,639.18, with accrued late charges thereon in the amount of \$1,216.08 for a total outstanding obligation in the amount of \$239,855.26; and

WHEREAS, the CITY and APPLICANT now desire to extend and rearrange the time and manner of payment of the Loan to APPLICANT, renew the Note and modify the payment terms thereof in the form of an Amended and Restated Note (the "Amended Note"), and extend the maturity date thereof and the lien(s) securing the same.

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 2, Section 1. **OBLIGATIONS OF CITY**, is hereby amended to add Section B., to read as follows:
 - B. It is the parties' intent that the outstanding Loan to APPLICANT be converted to an amortized term loan with a fixed interest rate per annum, as specified herein. The parties agree that as of the effective date of the First Amendment the amended payment schedule, repayment terms, and the interest rate reduction option for APPLICANT's outstanding obligation to the CITY will be as follows:
 - (1) The outstanding obligation of APPLICANT is hereby converted to a term loan with payments as follows: the principal and interest on the APPLICANT's Amended and Restated Promissory Note (the "Amended Note"), incorporated by reference herein, is payable on the 1st day of each month in thirty (30) monthly installments, commencing with a payment of TEN THOUSAND AND NO/100THS DOLLARS (\$10,000.00) on March 1, 2010 and continuing thereafter with monthly payments of TEN THOUSAND AND NO/100THS DOLLARS (\$10,000.00) for five (5) consecutive months continuing thereafter with monthly payments of EIGHT THOUSAND NINETY THREE AND 82/100THS DOLLARS (\$8,093.82) for the remaining twenty-four (24)

consecutive months with all outstanding principal and accrued interest, fees, and costs due and payable in full on August 1, 2010 ("Extended Maturity Date"), in lawful money of the United States at the principal office of the City of El Paso, Texas, Two Civic Center Plaza, El Paso, Texas 79901-1196, or at such other address as shall be designated by the CITY, to include, without limitation, the following terms:

- (a) The rate of interest applicable to the Amended Note shall be a fixed rate of interest equal to six percent (6.0%) per annum on the outstanding principal balance with said rate of interest lowered to four percent (4.0%) after the first six (6) months of repayment, as specified in the Amended Note;
 - (b) Each payment shall be credited first to accrued unpaid interest, costs and fees, if any, and then to principal;
 - (c) Any late payments will be subject to a late payment charge equal to two and one half percent (2.5%) on the unpaid portion of the regularly scheduled payment, as further specified in the Amended Note;
 - (d) The Amended Note or any portion of the outstanding principal balance due under said note may be prepaid at any time, and from time to time, without penalty or premium; and
 - (e) The amortization schedule is attached hereto, as Attachment A.
- (2) The City acknowledges receipt of a good faith delinquency payment by APPLICANT on January 28, 2010, which has been applied first to accrued late charges with the remainder applied to reduce the principal balance amount to the amount recited in the First Amendment to this Agreement.
2. Page 3, Section 3. **OBLIGATIONS OF APPLICANT**, subsection (C) is amended to add the following sentence:

All references to the Promissory Note(s) and Note(s) in this Agreement shall include and apply to the Amended Note and any and all other renewal notes issued in connection with APPLICANT's obligations under this Agreement.

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

IN WITNESS WHEREOF, CITY and APPLICANT have executed this First Amendment to the Agreement as of the date first written above to be effective on the same.

CITY OF EL PASO:

Joyce A. Wilson
City Manager

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Marie A. Taylor
Assistant City Attorney

Kathryn Dodson, Director
Economic Development Department

APPLICANT:
Centro Mayapan, Inc.

By: _____

Name (Printed): Lorena Andrade

Title: President

[ACKNOWLEDGMENTS ON FOLLOWING PAGE]

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on the ____ day of _____, 2010, by Joyce A. Wilson, as City Manager of the City of El Paso, Texas, on behalf of the City of El Paso, Texas (CITY).

Notary Public, State of _____

My Commission Expires:

ACKNOWLEDGMENT

STATE OF §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on the ____ day of _____, 2010, by Lorena Andrade, as President of Centro Mayapan, Inc., on behalf of said entity (APPLICANT).

Notary Public, State of _____

My Commission Expires:

AMENDED AND RESTATED PROMISSORY NOTE
(this "Note")

\$250,000.00

El Paso, Texas _____, 2010

- A. For value received, **Centro Mayapan, Inc.** (the "Maker"), promises to pay to the order of the **City of El Paso, Texas** ("City" or "Holder"), at its office at Two (2) Civic Center Plaza in El Paso, El Paso County, Texas, or at such other place as shall be designated by the City, in lawful money of the United States of America immediately available funds, the principal sum equal to the **lesser of TWO HUNDRED FIFTY THOUSAND AND NO/100THS DOLLARS** (\$250,000.00) at an interest rate of six percent (6.0%) per annum to be lowered to four percent (4.0%) after the first six (6) months of repayment as specified herein, and the unpaid principal amount outstanding as of March 1, 2010, together with accrued interest, fees, charges, and costs, if any, on each installment from date due until paid. Repayment shall be subject to the terms and conditions of that certain Chapter 380 Economic Development Program Agreement authorized by the El Paso City Council, as amended (the "Agreement"), to which reference is made for all particulars, and which is incorporated by reference as though fully set forth herein.
- B. **AMENDED PAYMENT SCHEDULE.** The outstanding obligation of Maker shall be converted to a term loan with payments as follows: the principal and interest on this Note is payable on the 1st day of each month in thirty (30) monthly installments, commencing with a payment of TEN THOUSAND AND NO/100THS DOLLARS (\$10,000.00) on March 1, 2010 and continuing thereafter with monthly payments of TEN THOUSAND AND NO/100THS DOLLARS (\$10,000.00) for five (5) consecutive months continuing thereafter with monthly payments of EIGHT THOUSAND NINETY THREE AND 82/100THS DOLLARS (\$8,093.82) for the remaining twenty-four (24) consecutive months with all outstanding principal and accrued interest due and payable in full on August 1, 2012 ("Extended Maturity Date").
- C. The City anticipates and expects that the scheduled payment due under the terms of this Note, as well as under any other instruments executed simultaneously herewith, shall be made promptly on the date such amount is due.
- (1) In the event that the City has not received any monthly installment due on or before the date ten (10) days after the date such installment is due and payable, Maker will be charged and Maker hereby agrees to pay to City, a late charge equal to two and one-half percent (2.5%) of the unpaid portion of the regularly scheduled installment then due and payable. Maker shall be obligated to pay no more than one (1) late charge with respect to each late installment.
 - (2) The Maker and the City intend to conform strictly to applicable usury laws. Therefore, the total amount of interest (as defined under applicable law) contracted for, charged or collected under this Note will never exceed the Highest Lawful Rate. If the City contracts for, charges or receives any

excess interest, it will be deemed a mistake. The City will automatically reform the contract or charge to conform to applicable law, and if excess interest has been received, the City will either refund the excess to Maker or credit the excess on the unpaid principal amount of this Note. All amounts constituting interest will be spread throughout the full term of this Note in determining whether interest exceeds lawful amounts.

- D. Each maker, surety and endorser of this Note expressly waives all notices, demands for payment, presentations for payments, notices of intention to accelerate the maturity, protest and notice of protests, as to this Note and as to each, every and all installments hereof, and each agrees that the time of payment hereof may be extended by the principals without further consent of any accommodation maker, endorser, guarantor or surety. Each Maker is responsible for all obligations represented by this Note. The obligations of Maker under this Note shall be absolute.
- E. Any prepayment must be in accordance with the terms specified in that certain Chapter 380 Economic Development Program Agreement referenced herein. Any prepayment shall be applied to reduce of the principal balance of the Note, thereby reducing the term of the Note accordingly. No penalty shall be charged for such prepayment.
- F. As a condition precedent to a transfer of all or any portion of the fee title of the property secured under this Note, Maker shall obtain the written consent of City. As a condition precedent to the assumption of this Note, Maker shall obtain the written consent of City. If, in either instance, as specified in this Paragraph F., Maker fails to obtain such written consent of City, City may, at its option, declare all of the balance of this Note, including the entire balance of principal and accrued interest on this Note, immediately due and payable. If City does choose in its own discretion to give its written Consent to Maker to transfer all or any portion of the fee title of the property secured under this Note, or if City does choose in its own discretion to give its written consent to Maker for a third-party to assume this Note, City may, at its option, require an increase in the rate of interest of this Note.
- G. Payment of this Note is secured by a collateral identified in the parties' Security Agreement dated June 23, 2009 and the UCC- Financing Statement No. 09-0025371037, all of which said security instruments are incorporated by reference herein.

This Note is related to the economic development of the Maker's business located at 2101 Myrtle Avenue, El Paso, El Paso County, Texas, and is further subject to the terms and conditions as specified in the Chapter 380 Economic Development Program Agreement, as amended, previously authorized by the El Paso City Council for the project, and referenced herein; all rights and remedies of the City as specified in the above-referenced contract as to the acceleration of the indebtedness evidenced by this Note and all other applicable terms and conditions, are expressly reserved herein and incorporated herewith.

- H. In the event of (a) default in the timely payment of either principal or interest hereon or any other amount payable hereunder, in whole or in part; or (b) default by Maker with respect to the hereinabove described Chapter 380 Economic Development Program Agreement, as amended, or any other security document related hereto, and referenced herein, and upon a failure to cure any such default before the expiration of ten (10) days from receipt by Maker of notice of any such default, such notice to be given by certified mail, return receipt requested, or by personal service, the holder of this Note shall have the right and option, in addition to any and all other rights, remedies or recourses available to it, to declare the unpaid balance of principal and accrued interest on this Note at once due and payable. Failure to exercise such right upon any default or any occurrence shall not constitute a waiver of the right to exercise it in the event of any subsequent default or occurrence of the same or some other character. If this Note is not paid at maturity, no matter how such maturity is brought about, then the holder hereof may, in addition to any and all other rights, remedies or recourses available to it, proceed with the foreclosure of the liens securing payment hereof in the manner provided in the Security Agreement and UCC Financing Statement, incorporated by reference herein, or any other security document, or in any other manner allowed by law or in equity.
- I. If this Note or any instrument securing or collateral to it is given to an attorney for collection or enforcement, or if suit is brought for collection or enforcement, or if it is collected or enforced through probate, bankruptcy, or other judicial proceeding, then Maker shall pay the City all costs of collection and enforcement, including court costs and reasonable attorney's fees, in addition to other amounts due. Reasonable attorney's fees shall be ten percent (10%) of all amounts due unless either party pleads otherwise.
- J. The unpaid principal balance of this Note at any time will be the total amounts advanced by the City, less the amount of all payments or prepayments of principal. Absent manifest error, the records of the City will be conclusive as to amounts owed.
- K. This Note is governed by Texas law. If a court of competent jurisdiction finds any provisions of this Note invalid or unenforceable, the remaining provisions shall not in any way be affected or impaired thereby, and all other provisions of this Note shall remain in full force and effect.
- L. Each Maker represents and warrants to the City as of this date that the following statements are and shall remain true and correct until all obligations are paid in full: if it is not a natural person, it is duly organized and validly existing and in good standing under the laws of the state of its incorporation or organization; has full power to own its properties and to carry on its business as now conducted; is duly qualified to do business and is in good standing in each jurisdiction in which the nature of the business conducted by it makes such qualification desirable; and has not commenced any dissolution proceedings; and that all information provided to the City in connection with the loan

evidenced by this Note is true and correct and an inducement for the City to make this loan under the Chapter 380 Economic Development Program and modification thereof.

- M. This Note may not be changed orally, but only by an amendment in writing signed by Maker and approved by the Holder.
- N. When the context requires, singular nouns and pronouns include the plural.
- O. Each of the persons signing below as Maker represents and warrants that he/she has full requisite power and authority to execute and deliver this Note to the City on behalf of the party for whom he/she signs and to bind such party to the terms and conditions of this Note and that this Note is enforceable against such party.
- P. This Note is issued in replacement, extension, modification, and renewal of that certain Loan Note issued by Maker dated June 23, 2009 payable to the City in the original principal amount of \$250,000.00 (the "Original Note"). The indebtedness of Maker to the City evidenced by the Original Note is continuing indebtedness and nothing herein shall be deemed to constitute payment or settlement of the Original Note or as a release or discharge or otherwise adversely affect any rights of the City against Maker. All amounts outstanding under the Original Note shall be transferred to, and be deemed to be outstanding under, this Note and Maker hereby acknowledges liability for, reaffirms, and promises to pay to the City the total unpaid balance of the indebtedness incurred under the Original Note, the Agreement, and Security Documents. All collateral securing said Original Note also extends to and secures this Note.

THIS NOTE AND THE OTHER WRITTEN LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.

THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

IN WITNESS WHEREOF, Maker has executed this Note as of the date first written above.

MAKER: CENTRO MAYAPAN, INC.

By: _____
Lorena Andrade, President

[ACKNOWLEDGMENT ON FOLLOWING PAGE]

(Acknowledgment)

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the _____ day of _____, 2010, by **Lorena Andrade**, as **President of Centro Mayapan, Inc.**, on behalf of said entity.

Notary's Commission Expires:

Notary Public, State of Texas
Notary's Name (Printed)

ATTACHMENT A

Amortization Schedule									
Year	Month	Beginning Balance	Payment	Note:	Principal	Interest	Cumulative Principal	Cumulative Interest	Ending Balance
2010	Mar	\$239,855.26	\$10,000.00	@ 6%	\$8,800.72	\$1,199.28	\$8,800.72	\$1,199.28	\$231,054.54
	Apr	\$231,054.54	\$10,000.00		\$8,844.73	\$1,155.27	\$17,645.45	\$2,354.55	\$222,209.81
	May	\$222,209.81	\$10,000.00		\$8,888.95	\$1,111.05	\$26,534.40	\$3,465.60	\$213,320.86
	Jun	\$213,320.86	\$10,000.00		\$8,933.40	\$1,066.60	\$35,467.80	\$4,532.20	\$204,387.46
	Jul	\$204,387.46	\$10,000.00		\$8,978.06	\$1,021.94	\$44,445.86	\$5,554.14	\$195,409.40
	Aug	\$195,409.40	\$10,000.00		\$9,022.95	\$977.05	\$53,468.81	\$6,531.19	\$186,386.45
	Sep	\$186,386.45	\$8,093.82	@ 4 %	\$7,472.53	\$621.29	\$7,472.53	\$621.29	\$178,913.92
	Oct	\$178,913.92	\$8,093.82		\$7,497.44	\$596.38	\$14,969.97	\$1,217.67	\$171,416.48
	Nov	\$171,416.48	\$8,093.82		\$7,522.43	\$571.39	\$22,492.40	\$1,789.06	\$163,894.05
2011	Dec	\$163,894.05	\$8,093.82		\$7,547.51	\$546.31	\$30,039.91	\$2,335.37	\$156,346.54
	Jan	\$156,346.54	\$8,093.82		\$7,572.66	\$521.16	\$37,612.57	\$2,856.53	\$148,773.88
	Feb	\$148,773.88	\$8,093.82		\$7,597.91	\$495.91	\$45,210.48	\$3,352.44	\$141,175.97
	Mar	\$141,175.97	\$8,093.82		\$7,623.23	\$470.59	\$52,833.71	\$3,823.03	\$133,552.74
	Apr	\$133,552.74	\$8,093.82		\$7,648.64	\$445.18	\$60,482.35	\$4,268.21	\$125,904.10
	May	\$125,904.10	\$8,093.82		\$7,674.14	\$419.68	\$68,156.49	\$4,687.89	\$118,229.96
	Jun	\$118,229.96	\$8,093.82		\$7,699.72	\$394.10	\$75,856.21	\$5,081.99	\$110,530.24
	Jul	\$110,530.24	\$8,093.82		\$7,725.39	\$368.43	\$83,581.60	\$5,450.42	\$102,804.85
	Aug	\$102,804.85	\$8,093.82		\$7,751.14	\$342.68	\$91,332.74	\$5,793.10	\$95,053.71
	Sep	\$95,053.71	\$8,093.82		\$7,776.97	\$316.85	\$99,109.71	\$6,109.95	\$87,276.74
	Oct	\$87,276.74	\$8,093.82		\$7,802.90	\$290.92	\$106,912.61	\$6,400.87	\$79,473.84
	Nov	\$79,473.84	\$8,093.82		\$7,828.91	\$264.91	\$114,741.52	\$6,665.78	\$71,644.93
2012	Dec	\$71,644.93	\$8,093.82		\$7,855.00	\$238.82	\$122,596.52	\$6,904.60	\$63,789.93
	Jan	\$63,789.93	\$8,093.82		\$7,881.19	\$212.63	\$130,477.71	\$7,117.23	\$55,908.74
	Feb	\$55,908.74	\$8,093.82		\$7,907.46	\$186.36	\$138,385.17	\$7,303.59	\$48,001.28
	Mar	\$48,001.28	\$8,093.82		\$7,933.82	\$160.00	\$146,318.99	\$7,463.59	\$40,067.46
	April	\$40,067.46	\$8,093.82		\$7,960.26	\$133.56	\$154,279.25	\$7,597.15	\$32,107.20
	May	\$32,107.20	\$8,093.82		\$7,986.80	\$107.02	\$162,266.05	\$7,704.17	\$24,120.40
	June	\$24,120.40	\$8,093.82		\$8,013.42	\$80.40	\$170,279.47	\$7,784.57	\$16,106.98
	July	\$16,106.98	\$8,093.82		\$8,040.13	\$53.69	\$178,319.60	\$7,838.26	\$8,066.85
Aug	\$8,066.85	\$8,093.74		\$8,066.85	\$26.89	\$186,386.45	\$7,865.15	(\$0.00)	

SECTION 1. OBLIGATIONS OF CITY.

A. The CITY hereby agrees to lend APPLICANT public funds not to exceed the total amount of TWO HUNDRED FIFTY THOUSAND AND NO/100THS DOLLARS (\$250,000.00), subject to the terms hereinafter specified, to be drawn from appropriated general revenue funds (the "Loan" or "Loan funds"). Such Loan shall be in the amount of \$250,000.00 at zero percent (0%) interest per annum and due and immediately payable on December 31, 2009 in the total amount of the outstanding principal, as evidenced by a Promissory Note (the "Note") in the form and substance as that attached hereto as **Exhibit "A."** All past due amounts of principal shall bear interest at the rate of six percent (6%) per annum from the due date until paid. Payment shall be made to CITY as directed in the Note and APPLICANT, as maker, may prepay all or any part of unpaid principal before maturity without penalty. The CITY will provide such public financing, as specified above, upon the following additional terms and conditions:

(1) The representations and warranties of the APPLICANT herein and in its application are true and accurate as of the date of this Agreement;

(2) Prior to disbursement of any Loan funds, the APPLICANT shall execute and deliver to the CITY all loan documents, including security instruments, that reasonably may be required by the CITY to effect the terms and conditions of this Agreement;

(3) The purpose of this loan is to provide APPLICANT with funds for working capital to operate the business located at 2101 Myrtle Avenue, El Paso, Texas. There is no other use of said Loan funds authorized by the CITY, and the use of the Loan funds by APPLICANT for any other purpose shall constitute a breach of contract by the APPLICANT for which the CITY may pursue any and all remedies, whether at law or equity, which are available to the CITY; and

(4) The APPLICANT nor any of its affiliate entities is delinquent in the repayment of other prior loans from the City of El Paso, including loans issued under the City-County Revolving Loan Fund Program, prior to disbursement of the Loan that is the subject of this Agreement.

SECTION 3. OBLIGATIONS OF APPLICANT.

During the term of this Agreement, APPLICANT shall comply with the following terms and conditions:

A. APPLICANT expressly agrees to comply with all of the terms and conditions of the Project Scope, further specified and detailed in **Exhibit "B"**, attached hereto and referenced herein for all purposes.

B. APPLICANT shall maintain an operating budget for the period ending December 31, 2009, which is attached hereto as **Exhibit "C"** and incorporated by reference herein. In addition to other rights under this Agreement, APPLICANT shall permit the CITY's

Economic Development Department to inspect the APPLICANT's monthly financial statements for purposes of assuring the CITY that the Loan proceeds are being expended and allocated in accordance with the APPLICANT's Project Budget for the term of the Agreement. The City Manager is authorized to accept a revised Project Budget from the APPLICANT, provided the Applicant submits a written explanation and justification of the budget revisions.

- C. APPLICANT agrees to use the Loan funds only for the purposes set forth herein. APPLICANT agrees to sign and deliver to CITY the Promissory Note(s) to evidence the Loan. The Note(s) shall be in the form and the substance of **Exhibit "A"**. APPLICANT agrees to repay the Loan in accordance with the terms of the Note(s). APPLICANT agrees that its receipt and retention of the Loan funds under this Agreement are contingent upon APPLICANT's compliance with the terms and conditions of this Agreement, the Deed of Trust instrument, and the Note(s).
- D. APPLICANT agrees to grant to the CITY a security interest in the personal property identified in the Security Agreement, attached hereto as **Exhibit "D"**. Further, APPLICANT agrees to the following terms and conditions:
- (1) APPLICANT agrees to take any and all necessary action to perfect such lien(s) and to protect the CITY's first lien position in the property described in **Exhibit "D"**. Any loans made under future advance clauses of any previous loans, without the CITY's written consent hereunder, shall constitute a breach of this Agreement. The lien instrument shall be in the form and substance of the Security Agreement attached hereto as **Exhibit "D"** and the CITY shall prepare and file a UCC Financing Statement with the Texas Secretary of State, which will be terminated upon full repayment of the Loan .
 - (2) APPLICANT shall furnish to CITY acceptable evidence of liability and casualty insurance on said real estate and improvements thereon which shall be sufficient to guarantee payment of all of the APPLICANT's indebtedness on the aforementioned property. This insurance coverage shall name the CITY as an additional insured.

SECTION 2. TERM.

The term of this Agreement shall be from the Effective Date of the Agreement and until the date on which all of the requirements of this Agreement have been satisfied and APPLICANT has made full payment on the Loan, including the principal amount, accrued interest, late charges, and collection costs, if any.

SECTION 5. EVENTS OF DEFAULT.

Each of the following shall constitute an Event of Default under this Agreement:

- A. **Failure to Maintain Development.** APPLICANT's failure or refusal to operate the Development pursuant to this Agreement through the entire Loan Period of this Agreement, and APPLICANT's failure or refusal to cure within thirty (30) days after written notice from the CITY describing such failure, shall be deemed an event of default. However, if such failure cannot be cured within such thirty (30) day period in the exercise of all due diligence, but the APPLICANT has not yet commenced such cure within such thirty (30) day period or fails to continuously thereafter diligently prosecute the cure of such failure, such actions or omissions shall also be deemed an event of default.
- B. **False Statements.** In the event the Applicant provides any written warranty, representation or statement under this Agreement or any document(s) related hereto that is/are false or misleading in any material respect, either now or at the time made or furnished, and APPLICANT fails to cure same within thirty (30) days after written notice from the CITY describing the violation shall be deemed an event of default. If such violation cannot be cured within such thirty (30) day period in the exercise of all due diligence, and APPLICANT fails to commence such cure within such thirty (30) day period or fails to continuously thereafter diligently prosecute the cure of such violation, such actions or omissions shall also be deemed an event of default. Further, if APPLICANT obtains actual knowledge that any previously provided warranty, representation or statement has become false or misleading after the time that it was made, and APPLICANT fails to provide written notice to the CITY of the false or misleading nature of such warranty, representation or statement within ten (10) days after APPLICANT learns of its false or misleading nature, such action or omission shall be deemed an event of default. In the event this Agreement is terminated pursuant to this Section, all Loan Payments previously provided by the CITY pursuant to this Agreement shall be recaptured and repaid by APPLICANT within sixty (60) days from the date of such termination.
- C. **Insolvency.** The dissolution or termination of APPLICANT's existence as a going business or concern, APPLICANT's insolvency, appointment of receiver for any part of APPLICANT's portion of the Property, any assignment of all or substantially all of the assets of APPLICANT for the benefit of creditors of APPLICANT, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against APPLICANT shall all be deemed events of default. However, in the case of involuntary proceedings, if such proceedings are discharged within sixty (60) days after filing, no event of default shall be deemed to have occurred.
- D. **Property Taxes.** In the event APPLICANT allows any property taxes owed to the CITY to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of such taxes and to cure such failure or post a satisfactory bond within thirty (30) days after written notice thereof from the CITY and/or El Paso Central Appraisal District, such actions or omissions shall be deemed an event of default.
- E. **Other Defaults.** Failure of APPLICANT to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any related documents, and fails to cure such failure within thirty (30) days after written notice from the other party describing such failure shall be deemed an event of default. If such failure cannot be cured

within such thirty (30) day period in the exercise of all due diligence, but if APPLICANT also fails or refuses to commence such cure within such thirty (30) day period or fails or refuses to continuously thereafter diligently prosecute the cure of such failure, such act or omission shall be deemed an event of default.

- F. **Failure to Cure.** If any event of default by APPLICANT shall occur, and after APPLICANT fails to cure same in accordance herewith, then this Agreement is terminated without any further action required of the CITY and the CITY's obligations end at that time. If a default has not been cured within the time frame stated herein, the non-defaulting party shall have all rights and remedies under the law or in equity.

- G. **Records.** Applicant shall prepare and maintain fiscal records and supporting documentation for all expenditures of Loan funds made under this Agreement. Upon request of the CITY, APPLICANT shall furnish for inspection any personnel records, which are necessary for the CITY determine whether the Loan funds were expended in accordance with this Agreement. At a minimum and without limitation, the APPLICANT must maintain the following accounting records: balance sheet (both monthly and year-to-date); income statements; general ledger; payroll check register, as applicable; a combined income statement reporting all resources and uses of funds; a detailed general ledger for the period; and monthly financial statements, including income statement and balance.

SECTION 6. TERMINATION OF AGREEMENT BY CITY WITHOUT DEFAULT OF APPLICANT.

The CITY may terminate this Agreement for its convenience and without the requirement of an event of default by APPLICANT, which shall become effective immediately if any state or federal statute, regulation, case law, or other law renders this Agreement ineffectual, impractical or illegal, including any case law holding that a Chapter 380 Economic Development Agreement such as this Agreement is an unconstitutional debt.

SECTION 7. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

- A. **Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by both parties.

- B. **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in El Paso County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of El Paso County, Texas.

- C. **Assignment of APPLICANT's Rights.** APPLICANT understands and agrees that the CITY expressly prohibits APPLICANT from selling, transferring, assigning or conveying in any way any rights to receive the Loan proceeds without the CITY's prior written

consent. Any such attempt to sell, transfer, assign or convey without the CITY's prior written consent shall result in the immediate termination of this Agreement, with no ability for the APPLICANT to cure.

- D. **APPLICANT's Sale or Transfer of the Collateral.** Prior to any sale or other transfer of ownership rights in the collateral, APPLICANT shall notify the CITY in writing of such sale or transfer within thirty (30) business days of the effectiveness of such sale or transfer. This provision is a material term of this Agreement and the failure to notify the CITY of such sale or transfer within the applicable period shall constitute an event of default.
- E. **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. CITY warrants and represents that the individual executing this Agreement on behalf of CITY has full authority to execute this Agreement and bind CITY to the same. The individual executing this Agreement on APPLICANT's behalf warrants and represents that he or she has full authority to execute this Agreement and bind Applicant to the same.
- F. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- G. **Effective Date.** The term "Effective Date" shall mean the date on which City Council has authorized the City Manager to execute this Agreement on behalf of the City.
- H. **Employment of Undocumented Workers.** During the term of this Agreement, the APPLICANT agrees not to knowingly employ any undocumented workers as defined in Texas Government Code Section 2264.001. If convicted of a violation under 8 U.S.C. Section 1324a(f), the APPLICANT shall repay the amount of the Loan payments received by the APPLICANT from the CITY as of the date of such violation not later than one hundred twenty (120) days after the date the APPLICANT is notified by the CITY of a violation of this section, plus interest from the date the Loan payment(s) was paid to the APPLICANT, at the rate of seven percent (7%) per annum. The interest will accrue from the date the Loan payment(s) were paid to the APPLICANT until the date the reimbursement payments are repaid to the CITY. The CITY may also recover court costs and reasonable attorney 's fees incurred in an action to recover the Loan payment(s) subject to repayment under this section. The APPLICANT is not liable for a violation by its subsidiary, affiliate, or franchisee, or by a person which whom Applicant contracts.
- I. **Execution of Agreement.** The El Paso City Council has authorized the City Manager to execute this Agreement on behalf of the CITY.
- J. **Force Majeure.** It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, fire or other casualty, or court injunction, the party so obligated or permitted shall be excused from doing or performing the same

during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period such party was delayed.

- K. **Notices.** All notices required to be given under this Agreement shall be given in writing and shall be effective when actually delivered or when deposited in the United States mail, first class, postage prepaid, addressed to the party to whom the notice is to be given at the addresses shown below. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, each party agrees to keep the other informed at all times of its current address.

CITY: City of El Paso
Attn: City Manager
2 Civic Center Plaza
El Paso, Texas 79901

Copy To: City of El Paso
Economic Development Department Director
2 Civic Center Plaza
El Paso, Texas 79901

APPLICANT: Centro Mayapan, Inc.
Attn: Lorena Andrade, President
2000 Texas Avenue
El Paso, Texas 79901

- L. **Ordinance Applicability.** The signatories hereto shall be subject to all ordinances of the CITY, whether now existing or in the future arising.
- M. **Severability.** In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.
- N. **Entire Agreement.** This Agreement, together with its attachments and the accompanying loan documents is the final, complete, integrated, and entire agreement between the parties with respect to the subject matter and supersedes all prior communications, oral or written, between the parties.

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties have executed this Agreement on as of the date first above written.

CITY OF EL PASO, TEXAS

Joyce A. Wilson
Joyce A. Wilson
City Manager

APPROVED AS TO FORM:

Marie A. Taylor
Marie A. Taylor
Assistant City Attorney

APPROVED AS TO CONTENT:

Kathryn Dodson
Kathryn Dodson, Director
Economic Development Department

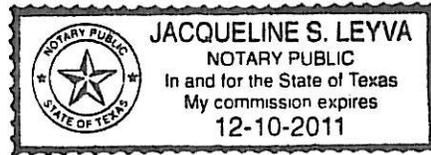
ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on the 16th day of June, 2009, by Joyce A. Wilson, as City Manager of the City of El Paso, Texas (CITY).

Jacqueline S. Leyva
Notary Public, State of Texas

My Commission Expires:
12/10/2011



APPLICANT: CENTRO MAYAPAN, INC.

By: Lorena Andrade

Lorena Andrade, President

[Acknowledgment on Following Page]

