

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

DEPARTMENT: City Development

AGENDA DATE: 06/18/2013

CONTACT PERSON/PHONE: Peter Wallish, Economic Development (915) 541-4747

DISTRICT(S) AFFECTED: 8

SUBJECT:

That the City Manager be authorized to sign a Chapter 380 Economic Development Program Agreement by and between the City of El Paso and Summit 11 Investment Group, for the redevelopment of a building for the use of a hotel located at 325 N. Kansas El Paso, Texas 79901. (District 8) [Economic Development, Peter Wallish (915) 541- 4747]

BACKGROUND/DISCUSSION:

The property located at 325 N. Kansas has been mostly vacant for the past decade with the exception of a short period when it operated as the Artisan Hotel. The applicant, Summit 11, agrees to purchase and redevelop the vacant property at 325 N. Kansas into a branded-flag hotel to serve the downtown area. The applicant agrees to purchase and significantly remediate the 60,000 sq.ft. property at a total project cost of \$11,000,000 to include demolition of the interior, partial redesign of the exterior, and construction of 115 guest rooms, 7,500 sq.ft of meeting and banquet space. Additional amenities will include ground floor retail, a lounge/pub, and renovation to the swimming pool, rooftop spa, and fitness facilities. Hotel flags will be limited to Starwood, IHG, or Hilton brands. The agreement consists of a ten (10) property year tax rebate, Building Fee Waivers and Construction Materials Sales Tax Rebates, ten (10) year ground floor sales tax rebate, ten (10) year alcohol tax rebate, and a parking and room block request of \$2,250,000 over ten (10) years for redevelopment of the vacant building for the proposed use.

PRIOR COUNCIL ACTION:

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

No.

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:

N/A

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

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

DEPARTMENT HEAD: _____ *MS Howell*

(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 sign the Chapter 380 Economic Development Program Agreement by and between the City of El Paso and Summit 11 Investment Group, LLC.

ADOPTED this the _____ day of _____ 2013.

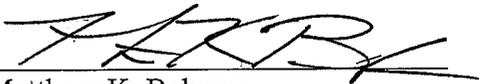
CITY OF EL PASO, TEXAS

ATTEST:

John F. Cook
Mayor

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Matthew K. Behrens
Assistant City Attorney

APPROVED AS TO CONTENT:



Mathew S. McElroy, Director
City Development Department

CITY OF EL PASO
AND
SUMMIT 11 INVESTMENT GROUP, LLC,

CHAPTER 380 ECONOMIC DEVELOPMENT
PROGRAM AGREEMENT

This **CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AND AGREEMENT** (this "Agreement") is made and entered into by and between the **CITY OF EL PASO, TEXAS** ("hereinafter referred to as "**CITY**"), a Texas home rule municipal corporation, and **SUMMIT 11 INVESTMENT GROUP, LLC**, (hereinafter "**SUMMIT 11**"), a Texas limited liability company, for the purposes and considerations stated below:

WHEREAS, the **SUMMIT 11** desires to enter into this Agreement pursuant to Chapter 380 of the Texas Local Government Code (hereinafter referred to as "Chapter 380"); and

WHEREAS, the **CITY** desires to provide, pursuant to Chapter 380, an incentive to **SUMMIT 11** to develop the Hotel as defined below; and

WHEREAS, the **CITY** has the authority under Chapter 380 to make loans or grants of public funds for the purposes of promoting local economic development and stimulating business and commercial activity within the City of El Paso; and

WHEREAS, the **CITY** determines that a grant of funds to **SUMMIT 11** will serve the public purpose of promoting local economic development and enhancing business and commercial activity within the **CITY**; and

WHEREAS, the **CITY** and **SUMMIT 11** desire that development of the Hotel, includes construction and/or installation of certain infrastructure, as set forth in this Agreement; and

WHEREAS, the creation of a Hotel will encourage increased economic development in the **CITY**, provide significant increases in the **CITY'S** sales tax revenues, and improve the **CITY'S** ability to provide for the health, safety and welfare of the citizens of El Paso; and

WHEREAS, the construction of the Hotel by **SUMMIT 11** shall be in accordance with the guidelines set forth in the City of El Paso Economic Development Incentive Policy; and

WHEREAS, the **CITY** has concluded and hereby finds that this Agreement clearly promotes economic development in the City of El Paso and, as such, meets the

requisites under Chapter 380 of the Texas Local Government Code and further, is in the best interests of the **CITY** and **SUMMIT 11**.

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

SECTION 1. TERM.

This Agreement shall be effective for thirteen (13) years from the Effective Date of this Agreement. However, **SUMMIT 11 INVESTMENT GROUP'S** eligibility for reimbursement for certain activities pursuant to Section 3 shall be limited to ten (10) consecutive years within the term of this Agreement.

SECTION 2. DEFINITIONS.

The following words shall have the following meanings when used in this Agreement.

- (a) **Agreement.** The word "Agreement" means this Chapter 380 Economic Development Program and Agreement, together with all exhibits and schedules attached to this Agreement, if any.
- (b) **Base Year Value.** The words "Base Year Value" mean the amount designated as fair market value of the **REAL PROPERTY** by the El Paso Central Appraisal District on January 1 of the year this agreement is signed.
- (c) **CITY.** The word "**CITY**" means the City of El Paso, Texas.
- (d) **City Parking Lot Facilities.** The words "City Parking Lot Facilities" mean the lot owned by **CITY** located 401 East Mills and 400 East Main, El Paso, Texas, and as depicted in **Exhibit B-2**.
- (e) **Comprehensive Plan.** The words "Comprehensive Plan" means the City of El Paso's Comprehensive Plan entitled "Plan El Paso" adopted by the El Paso City Council on March 6, 2012.
- (f) **Convention and Tourist Facilities.** The words "Convention and Tourists Facilities" mean and include the following: El Paso Convention Center, located at 1 Civic Center Plaza, El Paso, Texas, 79901; El Paso Museum of Art, located at 1 Arts Festival Plaza, El Paso, Texas, 79901; El Paso Museum of History, located at 12901 Gateway West, El Paso, Texas, 79928; Plaza Theatre Performing Arts Center, located at 125 Pioneer Plaza, El Paso, Texas, 79901; and the Baseball Stadium to be constructed on the former site of the El Paso City Hall located at 2 Civic Center Plaza, El Paso, Texas, 79901.

- (f) **Downtown Plan.** The words “Downtown Plan” means the Downtown 2015 Plan adopted by El Paso City Council on October 31, 2007, and incorporated into the Comprehensive Plan pursuant to the provisions of Section 213.002 of the Texas Local Government Code.
- (g) **Event Room Block.** The words “Event Room Block” mean Fifty Five (55) Hotel guest rooms and fifty percent (50%) of the meeting space in the Hotel reserved and made available at the Event Block Rate for tourists and guests attending said event.
- (h) **Event Block Rate.** The words “Event Block Rate” mean the lowest rate the **CITY** may require **SUMMIT 11** to quote or charge visitors of Convention and Tourist Facilities for a guest room or meeting space at Hotel during said event. The Event Block Rate shall be the charge assessed by **SUMMIT 11** for guest rooms at the regular standard room or meeting room rate less twenty percent (20%).
- (i) **Grant.** The word “Grant” means a payment to **SUMMIT 11** under the terms of this Agreement computed with reference to Sales and Use Taxes and Mixed Beverage Taxes generated by Hotel, and payable from the **CITY’S** general revenue fund.
- (j) **Hotel.** The word “Hotel” means hotel more specifically described in Section (a) of this Agreement and **Exhibit A**, owned and operated by **SUMMIT 11** generally located at 325 North Kansas Street, El Paso, Texas, 79901.
- (k) **Hotel Parking Lot Facilities.** The words “Hotel Parking Lot Facilities” mean Hotel parking spaces reserved and dedicated for use by Hotel visitors and guests located at 300 Main St, El Paso, Texas, 79901, as depicted in **Exhibit B-1**.
- (l) **Mixed Beverage Tax.** The words “Mixed Beverage Tax” or “Mixed Beverage Taxes” have the same meaning as defined by Section 183.021 of the Texas Tax Code, as amended. Presently, the total tax is equal to fourteen percent (14%) of the mixed beverage tax receipts, of which the **CITY** is entitled to 10.7143% (1.5% of the total mixed beverage tax receipts).
- (m) **Parking Subsidy.** The words “Parking Subsidy” means the amount the **CITY** agrees to pay to subsidize the Hotel’s use of the Hotel Parking Lot Facilities. The Parking Lot Subsidy shall be the lesser of the amount paid by **SUMMIT 11** for the use of the Hotel Parking Lot Facilities or Twelve Thousand Five Hundred (\$12,500) per month. The **CITY** shall first pay such subsidy out of the **CITY’S** Community Adjustment and Investment Program Fund (“CAIP Fund”) and next from the Economic Development Incentive Policy Impact Fund (“Impact Fund”) account derived from the El Paso Electric Company franchise fee paid to the **CITY** pursuant to the Franchise Agreement adopted by Ordinance No. 017460.

- (n) **Property Tax Rebate.** The words “Property Tax Rebate” means one hundred percent (100%) rebate of the **CITY’S** portion of the incremental ad valorem property tax revenue, not to exceed the total cumulative value of the **CITY’S** portion of the incremental ad valorem property tax revenue generated by the subject **REAL PROPERTY** including personalty added to the Hotel and located on the **REAL PROPERTY** above the Base Year Value for the Grant Period and payable first from the **CITY’S** CAIP Fund and next from the Impact Fund.
- (o) **REAL PROPERTY.** The words “**REAL PROPERTY**” means the Hotel owned and operated by **SUMMIT 11**, more specifically described in **Exhibit A** of this Agreement.
- (p) **Retailer(s)** The word “Retailer(s)” means tenants and lessees of the **REAL PROPERTY** required by the State Comptroller to collect Sales and Use Tax or Mixed Beverage Tax on taxable sales consummated in the City at the **REAL PROPERTY** covered by Chapter 151 and Chapter 183 of the Texas Tax Code.
- (q) **Qualified Expenditures.** The words “Qualified Expenditures” means those direct costs incurred by **SUMMIT 11** in the construction, renovation, or rehabilitation of the Hotel.
- (r) **Sales and Use Tax.** The words “Sales and Use Tax” or “Sales and Use Taxes” mean the **CITY’S** municipal sales and use tax, at the rate of one percent (1.0%), pursuant to Section 321.103(a) of the Texas Tax Code, as amended.
- (s) **State Comptroller.** The words “State Comptroller” means the Office of the Texas Comptroller of Public Accounts, or any successor agency.
- (t) **Submittal Package.** The words “Submittal Package” mean the documentation required to be supplied to **CITY** on a yearly basis as a condition of receipt of any Grant, Parking Subsidy, or Property Tax Rebate.
- (u) **SUMMIT 11.** The words “**SUMMIT 11**” mean the SUMMIT 11 INVESTMENT GROUP, LLC, a Texas limited liability company.

SECTION 3. OBLIGATIONS OF SUMMIT 11.

During the term of this Agreement, **SUMMIT 11** shall comply with the following terms and conditions; provided that **SUMMIT 11’S** inability or refusal to comply with the terms and conditions set forth in Section 3(a)(1)-(4) shall result in a termination of this Agreement and a release of both parties from the term hereof:

- (a) **Hotel Development and Construction.**
 - (1) **SUMMIT 11** agrees to develop and construct, at its sole cost, the Hotel. The Hotel shall be a Marriott, Hilton, Starwood, or IHG brand. IHG brands

shall be limited to Holiday Inn, Crowne Plaza, or Hotel Indigo. The Hotel shall have a minimum of One Hundred (100) rooms and provide, at a bare minimum, the following services and amenities: on-site restaurant and bar, room service, swimming pool, spa, fitness facility, concierge, banquet/meeting room and other amenities common in such flagship hotels. **SUMMIT 11** shall complete the purchase of the **REAL PROPERTY** within ninety (90) days of the effective date of this Agreement and commence construction on the Hotel within six (6) months of the effective date of this Agreement. **SUMMIT 11** shall receive a certificate of occupancy, and be open for business to the general public within twenty four (24) months from the effective date of this Agreement. **SUMMIT 11** shall be entitled to a one time extension of not fewer than thirty (30) days of any deadline set forth in this Section 3(a)(1), for no additional consideration, and all subsequent deadlines shall be accordingly adjusted. **SUMMIT 11** shall exercise its right to an extension by delivering written notice of its election to exercise its right to an extension to the **CITY** on or before the deadline which **SUMMIT 11** desires to extend.

- (2) **SUMMIT 11** agrees that the construction and renovation of the Hotel shall be in accordance with the requirements and review provisions of Chapter 20.20 (Historic Landmark Preservation) of the City municipal code. The construction and renovation shall also adhere to the design guidelines outlined in the Comprehensive Plan and the Downtown Plan.
- (3) **SUMMIT 11** agrees that it shall make Qualified Expenditures of not less than Eight Million and No/100 Dollars (\$8,000,000.00). **SUMMIT 11** shall submit receipts to the **CITY** for Qualified Expenditures within thirty-six (36) months of the effective date of this Agreement.
- (4) As consideration for the agreement of the **CITY** contained herein, **SUMMIT 11** agrees that it will diligently and faithfully in a good and workmanlike manner pursue the commencement and completion of construction and renovation on the **REAL PROPERTY** consistent with the requirements set forth herein. **SUMMIT 11** agrees that construction and renovation to the **REAL PROPERTY** will be in accordance with all applicable federal, state, and local laws and regulations. Moreover, **SUMMIT 11** agrees to give preference and priority to local manufacturers, suppliers, contractors and labor, except where not reasonably possible to do so without added expense, substantial inconvenience, or sacrifice in operating efficiency. The **REAL PROPERTY** shall be limited in its use to uses consistent with the development and operation of the Hotel and consistent with the **CITY'S** development goals, which is the encouraging of development or redevelopment of Downtown El Paso.

(b) **Documentation.**

SUMMIT 11 agrees to provide the **CITY** a copy of the following:

- (1) Closing Statement and any debt instruments for the purchase of the land and improvements thereon.
- (2) Copy of a development budget providing complete picture of construction expenditures, soft costs, and all other typical development costs, including contingencies.
- (3) Copy of financial pro-forma to include a detailed revenue and expense statement, including reserves for replacement, from pre-opening to stabilization.
- (4) Proof of equity in excess of Two Million Five Hundred Thousand and No/100 Dollars (\$2,500,000).
- (5) Signed copies of the proposed hotel operator/management and franchise agreements with a Marriott, Hilton, Starwood, or an approved IHG hotel containing all the terms and conditions regarding their operation of the hotel including all fees, required annual capital expenditure requirements, etc.
- (6) Copy of the interim construction loan commitment along with all terms and conditions including reserve requirements.
- (7) Signed copies of the Reciprocal Easement and Operating Agreement granting **SUMMIT 11** access to the Hotel Parking Lot Facilities.

(c) **Retailers Report and Waiver of Sales Tax or Mixed Beverage Tax Confidentiality.**

- (1) During the term of this Agreement and beginning after the Certificate of Occupancy has been issued to **SUMMIT 11**, **SUMMIT 11** shall provide the **CITY**, and maintain during the term of this Agreement, a list of each **Retailer** that occupies or occupied the **REAL PROPERTY** during the term of this agreement including the taxpayer identification number, taxpayer outlet number (as shown on the Texas Sales Tax Permit), Texas Alcohol Beverage Commission number (as shown on the Texas Liquor Permit or Texas Beer License), taxpayer name, and taxpayer location as reported to the State Comptroller, and any other information required by the State Comptroller to generate and provide the **CITY** with the Comptroller's Sales Tax Report and Mixed Beverage Tax Report for the Grant Period.
- (2) **SUMMIT 11** shall cause the **Retailers** to provide the **CITY** and **SUMMIT 11** a Waiver of Sales Tax or Mixed Beverage Tax Confidentiality

(Confidentiality Waiver), which authorizes the State Comptroller to release to the **CITY** and **SUMMIT 11** Sales and Use Tax and Mixed Beverage Tax information pertaining to taxable sales by **Retailers** at the **REAL PROPERTY** during the term of this Agreement. The Confidentiality Waiver must be in a form substantially similar to the example provided in **Exhibit F**. **SUMMIT 11** will be responsible for obtaining the Confidentiality Waivers from **Retailers**, providing the Confidentiality Waivers to the **CITY**, and maintaining copies of Confidentiality Waivers. **SUMMIT 11** shall also cause the **Retailers** to maintain an effective Waiver of Confidentiality during the term of this Agreement.

- (3) The confidential sales tax information provided or reported by the State Comptroller to the **CITY** shall be used to determine the amount of the Grant payment that applicant is eligible to receive. For any particular Grant Submittal Package and Grant amount determination, the **CITY** shall only consider the Sales and Use Tax or Mixed Beverage Tax Receipts attributable to **Retailers** that appear on the Retailers Report and that have a valid and effective Confidentiality Waiver on file with the **CITY**. The **CITY** will verify all such information, but the **CITY** shall not have an obligation to otherwise collect sales tax information and will have no obligation to make payments under this Agreement without such sales and use tax or mixed beverage tax payment confirmation from the State Comptroller.
- (4) While agreement is in effect, **SUMMIT 11** shall, upon request of the **CITY**, provide such additional documentation as may be reasonably requested by the **CITY** to evidence, support and establish the Sales and Use Tax or Mixed Beverage Tax Receipts.

(d) **Sales and Mixed Beverage Grant Submittal Package.**

On or before the March 1st of the first complete calendar year after the Hotel is open for business and continuing on or before March 1st of each year thereafter, but not to exceed ten (10) consecutive years (the "Grant Period"), **SUMMIT 11** agrees to submit to the **CITY** a Sales and Mixed Beverage Tax Grant Submittal Package containing the following:

- (1) **SUMMIT 11'S** grant request letter (or fax) stating the gross amount of the **CITY'S** Sales and Use Tax paid by **SUMMIT 11** and its **Retailers** for the Hotel for the applicable year, and the amount due **SUMMIT 11** by the **CITY** upon remittance from the State Comptroller for such year;
- (2) **SUMMIT 11'S** grant request letter (or fax) stating the gross amount of the Mixed Beverage Taxes paid by **SUMMIT 11** and its **Retailers** for the Hotel for the applicable year, and the amount due **SUMMIT 11** by the **CITY** upon remittance from the State Comptroller for such year;

- (3) **SUMMIT 11'S** certification of the documentation required by Section 3(d)(4) of this Agreement, evidencing the amount of Sales and Use Taxes and Mixed Beverage Taxes paid by **SUMMIT 11** and its **Retailers** to the State Comptroller for the applicable year; and
- (4) **SUMMIT 11'S** documentation identifying the taxable sales and use tax-eligible sales and taxable mixed beverage tax sales from the Hotel for the preceding year including the **Retailer** information required in Section 3(c) of this Agreement.

(e) **Property Tax Rebate Submittal Package.**

On or before March 1st of the first complete calendar year after the Hotel first opens for business and continuing on or before March 1st of each year thereafter, but not to exceed ten (10) consecutive years (the "Property Tax Rebate Period"), **SUMMIT 11** agrees to submit to the **CITY** a Property Tax Rebate Submittal Package containing the following:

- (1) **SUMMIT 11'S** property tax rebate request letter (or fax) stating the **CITY'S** portion of the incremental ad valorem property tax paid by **SUMMIT 11** for the applicable year, and the amount due **SUMMIT 11** by the **CITY**.
- (2) **SUMMIT 11'S** property tax payment receipts for the **REAL PROPERTY** and **PERSONALTY** added to the **REAL PROPERTY** by **SUMMIT 11**.
- (3) **SUMMIT 11'S** certification of the documentation required by Section 3(e)(2) of this Agreement, evidencing the amount of ad valorem property tax paid by **SUMMIT 11**.

(f) **Parking Subsidy Submittal Package**

On or before the last day of the fourth month after the Hotel first opens for business and continuing on or before last day of every third month thereafter, but not to exceed forty (40) consecutive three month periods (the "Parking Subsidy Period"), **SUMMIT 11** agrees to submit to the **CITY** a Parking Subsidy Submittal Package containing the following:

- (1) **SUMMIT 11'S** parking grant request letter (or fax) stating the total amount paid for use of the Hotel Parking Lot Facility by **SUMMIT 11**.
- (2) **SUMMIT 11'S** receipts or other proof of payment by **SUMMIT 11** for the use of the Hotel Parking Lot Facility.
- (3) **SUMMIT 11'S** certification of the documentation required by Section 3(f)(2) of this Agreement, evidencing the amount paid by the **SUMMIT 11** for use of the Hotel Parking Lot Facility.

(g) **Form of Submittal Packages**

Unless otherwise agreed by the **CITY** and **SUMMIT 11**, each Submittal Package shall be in the form attached hereto as **Exhibit C, Exhibit D, and Exhibit E**. Failure to timely submit a Submittal Package is a waiver of the Grant, Property Tax Rebate, or Parking Subsidy due to **SUMMIT 11** for the period that would have been covered by a timely submitted Submittal Package. If **SUMMIT 11** shall fail to timely submit a Submittal Package for a particular period, then the **CITY** may, but is not obligated to, give **SUMMIT 11** written notice of **SUMMIT 11'S** failure to timely submit such package, and **SUMMIT 11** shall have thirty (30) calendar days calculated from the date on which such written notice is given in which to submit such package. The **CITY'S** determination of the amount of the Grant, Property Tax Rebate, or Parking Subsidy due to **SUMMIT 11** is final; provided, however **SUMMIT 11** may appeal to the El Paso City Council within thirty (30) days of payment, the City Council shall hear the appeal within thirty (30) days, and the City Council's determination of the amount of the Grant, Property Tax Rebate, or Parking Subsidy shall be final; provided, however, nothing herein shall limit (or be construed to limit) **SUMMIT 11** rights and remedies as described in Section 5 of this Agreement.

(h) **Property Value**

The parties to this Agreement agree that the taxable value of the **REAL PROPERTY AND PERSONALTY** after completion of the construction and improvements will have a base value equal to the Base Year Value. **SUMMIT 11** covenants and agrees that during the term of this Agreement it shall not challenge or permit anyone else to take actions on its behalf to challenge any assessments by the Central Appraisal District at Base Year Value or lower for the Grant Period. It is the intent of the parties that the assessed value of the **REAL PROPERTY AND PERSONALTY** on the tax rolls have a base value equal to the Base Year Value during the Property Tax Rebate Period and any affirmative act by **SUMMIT 11** to reduce the assessed value to an amount lower than the Base Year Value during the Property Tax Rebate Period will be an event of default that will result in termination of this agreement.

(i) **Event Room Block.**

SUMMIT 11 agrees to provide Event Room Block at the Event Block Rate for visitors of Convention and Tourist Facilities during the term of this Agreement. **SUMMIT 11** agrees to provide the Event Block rate to the **CITY** at a minimum fourteen (14) days per month for the term of this Agreement. **SUMMIT 11** will provide an Event Room Block to visitors of Convention and Tourist Facilities with six (6) months advance notice of the event or convention and receipt of negotiated deposit and room rental contract.

(j) **City Parking Lot Facilities**

SUMMIT 11 agrees to repair any damages to the City Parking Lot Facilities caused by Hotel employees or patrons. Failure to timely repair any damages caused by Hotel employees or patrons will result in the termination of the Parking Subsidy and access to the City Parking Lot Facility.

(k) **Profit Sharing**

(1) As additional consideration for the benefits provided by this Agreement, **SUMMIT 11** agrees that if the Hotel is sold to a third party during the initial five (5) years of the Parking Subsidy Period, and **SUMMIT 11** realizes a profit from the sale of the Hotel, the **CITY** shall be entitled to share in the Net Profit. The Net Profit shall be the amount remaining after deducting customary seller's closing costs such as inspection, survey, title insurance, and commission and legal fees (as verified by a Seller's Closing Statement) and **SUMMIT 11'S** basis in the Hotel. Within six (6) months after the completion of construction and the commencement of operations of the Hotel, **SUMMIT 11** shall submit a written document detailing its basis calculation for the property including the acquisition costs, design and construction expenses, franchise fees, etc. **SUMMIT 11** shall update this calculation annually and provide the **CITY** an updated calculation annually. The City Manager shall review and approve the expenses and **SUMMIT 11'S** basis calculation for the purposes of this section only. In the event **SUMMIT 11** fails to submit a proposed basis figure within the time period specified herein, **SUMMIT 11'S** basis shall be deemed to be the Base Year Value for purposes of this section in the event a third party offers to buy the Hotel is received during the term of this Agreement.

(2) The **CITY'S** share of the profits shall be 38.24% (Profit Sharing Percentage) of the Net Profit. This is a negotiated figure calculated using a ratio of the proposed incentives of Three Million Fifty Nine Thousand Two Hundred Seventy Nine and 00/100 Dollars (\$3,059,279.00) and the projected project costs of developing and constructing the Hotel of Eight Million and 00/100 Dollars (\$8,000,000.00). This number may be adjusted by the actual costs incurred by **SUMMIT 11** in developing and constructing the Hotel and documented within the time period specified above.

(3) A sale of the majority interest in **SUMMIT 11**, an interest of 51% or greater that holds a fee title to the **REAL PROPERTY**, shall terminate this Agreement and all previously paid grants, rebates, subsidies, and other incentives paid under this Agreement shall be paid back to the **CITY** within sixty (60) days of the sale. A series of sales spaced over time to the same entity, individual, or related entities and individuals that results in a change in the majority interest of **SUMMIT 11** will also have the same effect. Adequate documentation to verify the majority ownership interest shall be provided to the **CITY** with the Submittal Packages. The signature of the Majority Member of **SUMMIT 11**, in his individual capacity, affixed to this Agreement is for the limited purpose of evidence of her knowledge and agreement with this Section 3(k)(3).

- (4) A transfer by operation of law, or for estate planning purposes shall not be considered a "sale" hereunder.

SECTION 4. OBLIGATIONS OF CITY.

During the term of this Agreement and so long as an event of default has not occurred and is continuing as set forth in Section 6 of this Agreement (provided, however, an event of default hereunder shall not be deemed to have occurred until after the expiration of the applicable notice and cure period), **CITY** shall comply with the following terms and conditions:

(a) **Grant Payments.**

(1) For each calendar year during the term of this Agreement and beginning in the first full calendar year after the date **SUMMIT 11** first opens the Hotel to the general public, an amount equal to one hundred percent (100%) of the **CITY'S** Sales and Use Tax revenue, and Mixed Beverage Taxes, generated by and attributed solely to the Hotel's sales in the immediately prior calendar year and remitted from the State Comptroller to **CITY**, shall be tendered by the **CITY** as a Grant by the **CITY** to **SUMMIT 11** on a yearly basis upon **SUMMIT 11'S** satisfaction of the requirements of Section 3(d) of this Agreement. Such Grant payments will continue until the earlier of: expiration or termination of this Agreement or expiration of the Grant Period. The maximum amount paid over the Grant Period shall not exceed Two Hundred Sixteen Thousand Seven Hundred Fifteen and 00/100 Dollars (\$216,715.00).

(2) The **CITY** agrees to process any Grant payments for Sales and Use Tax and Mixed Beverage Tax rebates to **SUMMIT 11** within thirty (30) days after receipt of the later of:

- (A) Sales and Use Tax funds from the State Comptroller's office;
- (B) Mixed Beverage Tax funds from the State Comptroller's office;
- (C) **SUMMIT 11'S** Grant Submittal Package;
- (D) Any other documents reasonably necessary to calculate and process the Grant payment.

(b) **Property Tax Rebate Payments.**

For each calendar year during the term of this Agreement and beginning in the first complete calendar year after the Hotel opens for business, the Property Tax Rebate shall be tendered from the **CITY'S** general fund by the **CITY** to **SUMMIT 11** on a yearly basis upon **SUMMIT 11'S** satisfaction of Section 3(e). Such Grant

payments will continue until the earlier of: expiration or termination of this Agreement or expiration of the Grant Period. The maximum amount paid over the Property Tax Rebate Period shall not exceed Five Hundred Ninety Two Thousand Five Hundred Sixty Four and 00/100 Dollars (\$592,564.00). The **CITY** agrees to process any Property Tax Rebate payments within thirty (30) days after receipt of **SUMMIT 11'S** Property Tax Rebate Submittal Package and any other documents reasonably necessary to calculate and process the Property Tax Rebate payment.

(c) **Parking Subsidy Payments.**

For each three month period beginning the fourth month after the Hotel opens for business, the **CITY** shall tender the Parking Subsidy upon **SUMMIT 11'S** satisfaction of Section 3(f). Such Grant payments will continue until the earlier of: expiration or termination of this Agreement or expiration of the Parking Subsidy Period. The maximum amount paid over the Parking Subsidy Period shall not exceed One Million Five Hundred Thousand and 00/100 Dollars (\$1,500,000.00). The **CITY** agrees to process any Parking Subsidy payments to **SUMMIT 11** within thirty (30) days after receipt of **SUMMIT 11'S** Parking Subsidy Submittal Package and any other documents reasonably necessary to calculate and process the Parking Subsidy payment.

(d) **Event Room Block Payment**

CITY shall pay to **SUMMIT 11** on an annual basis Seventy Five Thousand and No/100 Dollars (\$75,000.00) a year for the term of this Agreement for Event Room Blocks, and for the provision of Event Room Block Rates for attendees at Convention and Tourist Facilities, as prescribed in Section 3(i) of this Agreement. **CITY** hereby agrees to provide **SUMMIT 11** six (6) months advance notice requiring **SUMMIT 11** to provide the Event Room Block at the Event Block Rate for visitors of Convention and Tourist Facilities upon receipt of negotiated deposit and room rental contract during the term of this Agreement. Further, the **CITY** hereby agrees to provide **SUMMIT 11** with "move in" and "move" out" dates for the Convention and Tourist Facilities event. The first payment shall be made the first day of the month following the opening of the Hotel and shall continue regularly and monthly on the first day of each succeeding month until One Hundred Twenty (120) monthly payments of Six Thousand Two Hundred Fifty and No/100 (\$6,250.00) each have been made. In no event shall the City pay more than Seventy Five Thousand and No/100 Dollars (\$75,000.00) a year for ten (10) years. The **CITY** shall first tender such payments from the **CITY'S** CAIP Fund and next from the Impact fund.

(e) **Access to City Parking Lot Facilities**

The **CITY** agrees that it shall open the City Parking Lot Facilities to guests of the Hotel as overflow parking from 6:00 p.m. to 6:00 a.m. Monday through Thursday and all day Friday through Sunday commencing the first day the Hotel opens for

business and continuing for ten (10) years. Should the **CITY** switch from a four day work week to a five day work week, the overflow parking hours shall change to 6:00 p.m. to 6:00 a.m. Monday through Friday and all day Saturday and Sunday. Additionally, should the City Parking Lot Facilities be temporarily unavailable due to construction, improvements, maintenance, or other reasons that prevent the **CITY** from utilizing the City Parking Lot Facilities, the **CITY** will not be obliged to find an alternative overflow parking facility for **SUMMIT 11** nor will the period allowing **SUMMIT 11** access to the City Parking Lot Facilities be extended.

(f) **General Fund Obligations**

The **CITY** agrees to promptly process and remit to **SUMMIT 11** all payments in accordance with terms of this Agreement. It is expressly understood by the parties to this Agreement that, except as otherwise provided herein, the payments contemplated in this Agreement in no way obligates the **CITY'S** general fund or any monies or credits of the **CITY** and creates no debt of, nor any liability to, **SUMMIT 11** or third parties beyond the specific obligations contained herein. All payments made by the **CITY** under this Agreement are subject to appropriation of such funds for such payments to be paid in the budget year for which they are made.

SECTION 5. EVENTS OF DEFAULT.

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

- (a) **Failure to Maintain Hotel.** Failure to operate a Hotel on the **REAL PROPERTY** for the term of this Agreement or to operate the hotel as a full service hotel as specified in Section 3(a) of this Agreement, and if **SUMMIT 11** fails to cure such failure within sixty (60) days after written notice from the **CITY** describing such failure, or if such failure cannot be cured within such sixty (60) day period in the exercise of all due diligence, then if **SUMMIT 11** fails to commence such cure within such sixty (60) day period or fails to continuously thereafter diligently prosecute the cure of such failure.
- (b) **False Statements.** Any written warranty, representation or statement made or furnished to the **CITY** by **SUMMIT 11** under this Agreement or any document(s) related hereto furnished to the **CITY** by **SUMMIT 11** is/are false or misleading in any material respect, either now or at the time made or furnished, and **SUMMIT 11** fails to cure same within sixty (60) days after written notice from the **CITY** describing the violation, or if such violation cannot be cured within such sixty (60) day period in the exercise of all due diligence, then if **SUMMIT 11** fails to commence such cure within such sixty (60) day period or fails to continuously thereafter diligently prosecute the cure of such violation, or if **SUMMIT 11** obtains actual knowledge that any such warranty, representation or statement has become false or misleading after the time that it was made, and **SUMMIT 11** 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 **SUMMIT 11** learns of its false or misleading nature.

- (c) **Insolvency.** The dissolution or termination of **SUMMIT 11'S** existence as a going business or concern, **SUMMIT 11'S** insolvency, appointment of receiver for any part of **SUMMIT 11'S** portion of the Property, any assignment of all or substantially all of the assets of **SUMMIT 11** for the benefit of creditors of **SUMMIT 11**, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against **SUMMIT 11**.
- (d) **Construction of Hotel.** **SUMMIT 11'S** failure to comply with its construction obligations set forth in this Agreement and **SUMMIT 11** fails to cure same within sixty (60) days after written notice from the **CITY** unless such failure cannot be cured within such sixty (60) day period in the exercise of all due diligence, then if **SUMMIT 11** fails to commence such cure within such sixty (60) day period or fails to continuously thereafter diligently prosecute the cure of such failure, except to the extent such failure is caused by any act or failure to act on the part of the **CITY**.
- (e) **Minimal Annual Occupancy and Average Daily Rate.** **SUMMIT 11'S** failure to maintain a minimum annual occupancy rate of fifty percent (50%) based on 39,420 room nights and failure to maintain an average daily rate of Ninety and 00/100 Dollars (\$90.00) during the course of a year.
- (f) **Property Taxes.** If **SUMMIT 11** allows its 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. **SUMMIT 11** shall have the right to contest the appraised value of the Hotel, but in no event shall **SUMMIT 11** contest the value of the Hotel on the tax rolls of the El Paso Central Appraisal District during the term of this Agreement at the Base Year Value or less.
- (g) **Failure to Cure.** If any Event of Default by **SUMMIT 11** shall occur, and after **SUMMIT 11** fails to cure same in accordance herewith, then this Agreement is terminated 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.

SECTION 6. TERMINATION OF AGREEMENT BY CITY WITHOUT DEFAULT.

CITY may terminate this Agreement without an event of default by **SUMMIT 11** and effective immediately if (i) any state or federal statute, regulation, case law, or other law renders this Agreement ineffectual, impractical or illegal, including case law holding that a Chapter 380 Economic Development Agreement rebating Sales and Use Taxes such as this Agreement is an unconstitutional debt; or (ii) the federal government implements

the Streamlined Sales and Use Tax or similar legislation in such a manner as to change the consummation of a sales and use tax event to a tax site outside of the **CITY** thereby eliminating the **CITY'S** rights in the sales tax proceeds paid by **SUMMIT 11** for the Hotel.

SECTION 7. LIMITED RETURN ON INVESTMENT (ROI).

During the term of this Agreement if **SUMMIT 11** realizes an ROI in excess of fifteen percent (15%) per annum, the total package of incentives arising from this Agreement and be reduced by an amount to result in a yield of only fifteen percent (15%) per annum.

SECTION 8. 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 the party or parties sought to be charged or bound by the alteration or amendment.
- (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.** **SUMMIT 11** understands and agrees that the **CITY** expressly prohibits **SUMMIT 11** from selling, transferring, assigning or conveying in any way any rights to receive the Grant proceeds without the **CITY'S** prior written consent. Any attempts to assign without the prior written consent of the **CITY** is void and shall be considered an event of default and may, at the option of the **CITY**, result in termination of this Agreement.
- (d) **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. **SUMMIT 11** warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind it to the same.
- (e) **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.

- (f) **Encumbrances.** Other than a lien for acquisition and construction funding, and the lien for ad valorem taxes not yet due and payable, **SUMMIT 11** agrees that it shall not place any encumbrances on the **REAL PROPERTY** without first obtaining the written permission of the City Manager or her designee. Failure to obtain such permission will be considered an act of default and will immediately terminate this Agreement.
- (g) **Effective Date.** The effective date (the "Effective Date") of this Agreement shall be the date on which the El Paso City Council approves this Agreement.
- (h) **Filing.** This Agreement shall be filed in the deed records of El Paso County, Texas. The provisions of this Agreement shall be deemed to run with the land and shall be binding on heirs, successors and assigns of **SUMMIT 11**.
- (i) **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.
- (j) **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 above. 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
City Manager
P.O. Box 1890
El Paso, Texas 79950-1890

Copy to: City of El Paso
Director City Development Department
P.O. Box 1890
El Paso, Texas 79950-1890

SUMMIT 11: Summit 11 Investment Group, LLC
Madhi Nair
6655 Gateway West
El Paso, Texas 79925

Copy to: Gordon Davis Johnson & Shane P.C.
Attention: Patrick R. Gordon
4695 N. Mesa
El Paso, Texas 79912

- (k) **Ordinance Applicability.** The signatories hereto shall be subject to all ordinances of the **CITY**, whether now existing or in the future arising; provided however no ordinance shall reduce or diminish the contractual obligations contained herein. This Agreement shall confer no vested rights on the Hotel unless specifically enumerated herein.
- (l) **Revenue Sharing Agreement.** The **CITY** designates this Agreement as a revenue sharing agreement, thereby entitling the **CITY** to request Sales and Use Tax information from the State Comptroller, pursuant to section 321.3022 of the Texas Tax Code, as amended.
- (m) **Sale or Transfer.** Upon any sale or other transfer of ownership rights in the Property, **SUMMIT 11** shall notify the **CITY** in writing of such sale or transfer within thirty (30) business days of such sale or transfer. Such 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 a default.
- (n) **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.
- (o) **Sovereign Immunity.** No party hereto waives any statutory or common law right to sovereign immunity by virtue of its execution hereof.
- (p) **Employment of Undocumented Workers.**
 - (i) **SUMMIT 11** agrees not to knowingly employ any undocumented workers as defined in Texas Government Code Section 2264.001;
 - (ii) If convicted of a violation under 8 U.S.C. Section 1324a(f), **SUMMIT 11** shall repay the amount of the Grant payments received by **SUMMIT 11** from the **CITY** as of the date of such violation not later than one hundred twenty (120) days after the date **SUMMIT 11** is notified by **CITY** of a violation of this section, plus interest from the date the Grant payment(s) was paid to **SUMMIT 11**, at the rate of five percent (5%) per annum. The interest will accrue from the date the Grant payment(s) were paid to **SUMMIT 11** until the date the reimbursement payments are repaid to

CITY. **CITY** may also recover court costs and reasonable attorneys' fees incurred in an action to recover the Grant payment(s) subject to repayment under this section; and

- (iii) **SUMMIT 11** is not liable for a violation by its subsidiary, affiliate, or franchisee, or by a person which whom **SUMMIT 11** contracts.

IN WITNESS WHEREOF, the parties have executed this Agreement on this _____ day of _____, 20____.

(SIGNATURES ON NEXT PAGE)

SUMMIT 11:

SUMMIT 11 INVESTMENT GROUP,
LLC, a Texas limited liability company:

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____,
2013, by _____ as _____ and by _____ as
_____ of **SUMMIT 11 INVESTMENT GROUP, LLC**, a limited liability
company, organized and existing under the laws of the State of Texas.

Notary Public, State of Texas

My Commission Expires:

(SIGNATURES CONTINUE ON FOLLOWING PAGE)

**MAJORITY MEMBER OF
SUMMIT 11 INVESTMENT GROUP, LLC
IN INDIVIDUAL CAPACITY**

By: _____
Name: _____
Title: _____
Date: _____

STATE OF TEXAS §
§
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2013, by _____ as the majority interest member of **SUMMIT 11 INVESTMENT GROUP, LLC**, a limited liability company, organized and existing under the laws of the State of Texas in his individual capacity.

Notary Public, State of Texas

My Commission Expires:

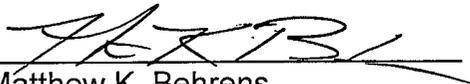
(SIGNATURES CONTINUE ON FOLLOWING PAGE)

CITY:

CITY OF EL PASO, TEXAS

By: _____
Joyce A. Wilson
City Manager

APPROVED AS TO FORM:



Matthew K. Behrens
Assistant City Attorney

APPROVED AS TO CONTENT



Mathew S. McElroy, Director
City Development Department

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This Instrument was acknowledged before me on the ____ day of _____, 2013, by Joyce A. Wilson, City Manager of the City of El Paso, Texas, on behalf of the City of El Paso, Texas.

Notary Public, State of Texas

EXHIBIT A

[Legal Description / Hotel Description]

Legal Description

10 MILLS E 54 FT OF N 1/2 OF BLK

Hotel Description

- One Hundred (100) Rooms
- Marriott, Hilton, Starwood, IHG Brand (Holiday Inn, Crowne Plaza, or Hotel Indigo)
- 7,500 square feet of meeting and banquet space
- Ground level restaurant and bar
- Rooftop Spa
- Room Service
- Swimming Pool
- Fitness Facilities
- Concierge
- Other amenities common to Marriott, Hilton, or Starwood brands as well as Holiday Inn, Crowne Plaza, or Hotel Indigo

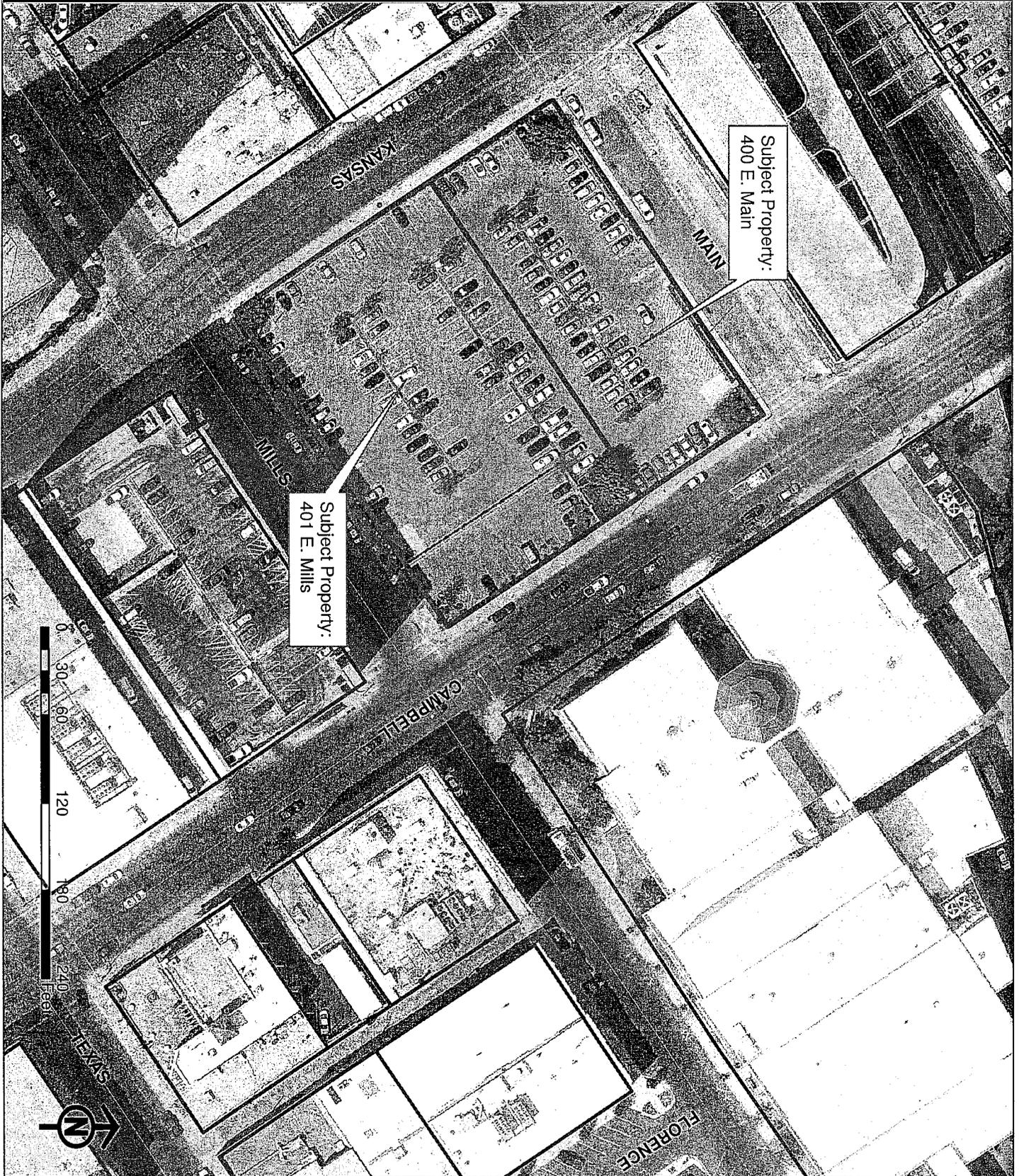
EXHIBIT B-1

[Hotel Parking Lot Facilities]

EXHIBIT B-2

[City Parking Lot Facilities]

CITY PARKING LOT FACILITIES



Subject Property:
400 E. Main

Subject Property:
401 E. Mills

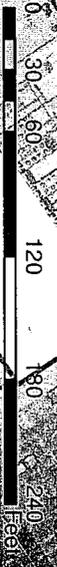


EXHIBIT C

[Grant Submittal Package Form]

SUMMIT 11 INVESTMENT GROUP, LLC believes that it has substantially met its obligations under the Chapter 380 Agreement dated the ____ day of _____, 20__ and signed by _____ of **SUMMIT 11 INVESTMENT GROUP, LLC**.

This Grant Submittal Package Form is submitted in compliance with the Agreement and in anticipation of receiving the Grant payments referenced in the Agreement in consideration for its obligations _____ met _____ therein.

As required by the Agreement, the following information is submitted as documentation required for the reimbursement of _____ expenses detailed and attached hereon representing eligible expenses incurred from _____ to _____.

1. Documentation required by Section 3(d) (1)-(4) of the Agreement.
2. All appropriate and substantiating documents detailing eligible reimbursement amount requested.

It is understood by **SUMMIT 11 INVESTMENT GROUP, LLC** that the City of El Paso has up to thirty (30) days to process this request and reserves the right to deny the Grant claim if the terms of the Agreement have not been complied with.

SUMMIT 11 INVESTMENT GROUP, LLC

Name: _____
Title: _____

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on the ____ day of _____, 20__, by _____, as _____ of **SUMMIT 11 INVESTMENT GROUP, LLC**, on behalf of said entity (APPLICANT).

Notary Public, State of Texas

My Commission Expires:

EXHIBIT D

[Property Tax Rebate Submittal Package Form]

SUMMIT 11 INVESTMENT GROUP, LLC believes that it has substantially met its obligations under the Chapter 380 Agreement dated the ____ day of _____, 20__ and signed by _____ of **SUMMIT 11 INVESTMENT GROUP, LLC**.

This Property Tax Rebate Submittal Package Form is submitted in compliance with the Agreement and in anticipation of receiving the Property Tax Rebate payments referenced in the Agreement in consideration for its obligations met therein.

As required by the Agreement, the following information is submitted as documentation required for the reimbursement of _____ expenses detailed and attached hereon representing eligible expenses incurred from _____ to _____.

1. Documentation required by Section 3(e) (1)-(3) of the Agreement.
2. All appropriate and substantiating documents detailing eligible reimbursement amount requested.

It is understood by **SUMMIT 11 INVESTMENT GROUP, LLC** that the City of El Paso has up to thirty (30) days to process this request and reserves the right to deny the Grant claim if the terms of the Agreement have not been complied with.

SUMMIT 11 INVESTMENT GROUP, LLC

Name: _____
Title: _____

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on the ____ day of _____, 20__, by _____, as _____ of **SUMMIT 11 INVESTMENT GROUP, LLC**, on behalf of said entity (APPLICANT).

Notary Public, State of Texas

My Commission Expires:

EXHIBIT E

[Parking Subsidy Submittal Package]

SUMMIT 11 INVESTMENT GROUP, LLC believes that it has substantially met its obligations under the Chapter 380 Agreement dated the ____ day of _____, 20__ and signed by _____ of SUMMIT 11 INVESTMENT GROUP, LLC.

This Parking Subsidy Submittal Package Form is submitted in compliance with the Agreement and in anticipation of receiving the Subsidy payments referenced in the Agreement in consideration for its obligations met therein.

As required by the Agreement, the following information is submitted as documentation required for the reimbursement of _____ expenses detailed and attached hereon representing eligible expenses incurred from _____ to _____.

- 3. Documentation required by Section 3(f) (1)-(3) of the Agreement.
- 4. All appropriate and substantiating documents detailing eligible subsidy amount requested.

It is understood by SUMMIT 11 INVESTMENT GROUP, LLC that the City of El Paso has up to thirty (30) days to process this request and reserves the right to deny the Grant claim if the terms of the Agreement have not been complied with.

SUMMIT 11 INVESTMENT GROUP, LLC

Name: _____
Title: _____

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on the ____ day of _____, 20__, by _____, as _____ of SUMMIT 11 INVESTMENT GROUP, LLC, on behalf of said entity (APPLICANT).

Notary Public, State of Texas

My Commission Expires:

EXHIBIT F

[Waiver of Sales and Use Tax or Mixed Beverage Tax Confidentiality]

Date _____

I authorize the State of Texas Comptroller of Public Accounts to release [sales / mixed beverage] tax information pertaining to the taxpayer indicated below to _____, a _____, its successors, assigns or nominees, and the **City of El Paso, Texas**. I understand that this waiver applies only to place of business located at _____ in the City of El Paso, El Paso County, Texas.

Please print or type the following information as shown on your Texas [Sales and Use Tax Permit / Liquor Permit / Beer License]:

Name of Taxpayer Listed on Texas Sales Tax Permit:

Name Under Which Taxpayer is Doing Business (d/b/a or Store Name):

Taxpayer Mailing Address:

Physical Location of Business Permitted for [Sales Tax / Mixed Beverage Sales Tax] in El Paso, Texas:

Texas Taxpayer ID Number
Tax Outlet Number / TABC Number

Authorized Signature

Printed Name:

Title:

Phone:

The authorized signature must be an owner, officer, director, partner, or agent authorized to sign a Texas Sales Tax Return or a Texas Mixed Beverage Tax Return. If you have any questions concerning this waiver of confidentiality, please contact the Texas Comptroller of Public Accounts at (800) 531-5441.

Proposed Redevelopment of 325 N. Kansas (Artisan Hotel building)

Applicant: Summit 11 Investments



Proposed project: 325 N. Kansas



- Closed in March 2010 after operating as the Artisan Hotel for a five month period
- Vacant since 2010 and for much of the past decade
- ❖ Parking easement with adjacent property





Applicant: Summit 11 Investment Group Portfolio:

- Holiday Inn El Paso Airport - El Paso, TX.
2009 – Current. 133 Guest Rooms
- Comfort Inn & Suites I-10 Airport - El Paso, TX.
2011 – Current. 101 Guest Rooms
- Holiday Inn & Suites – Vail, CO.
2004 – Current. 101 Guest Rooms
- Quality Inn – Pecos, TX.
2012 – Current. 100 Guest Rooms
- Apex at Vail Condominiums – Vail, CO.
2004 – Current. 19 Units
- Windsor Senior Living – Dallas, TX.
2007 – Current. 240 Units.



Holiday Inn Airport – El Paso



Comfort Inn – El Paso



Proposed project: 325 N. Kansas

Hotel Redevelopment

- Min. \$8M Redevelopment of entire 60,000 SF hotel (purchase & construction estimated at \$11M per financials)
- Complete demolition of interior
- Partial redesign of exterior to “avant-garde design”
- Reconfiguration of property for min. 100 guest rooms
- Meeting and banquet space, on-site restaurant & bar
- Pool renovation, rooftop spa and fitness facility
- Brands limited to: Marriott, Starwood, IHG or Hilton
- Estimated project completion: 12-15 months

Sources and Uses

- Equity: \$2,770,000
- Debt: \$8,310,000
- Total Est. Project Costs: \$11,080,000 (Per Financials)



Proposed project: 325 N. Kansas (cont.)

Incentive Analysis and Developer Request:

- Property and Sales Tax Incentives: Hotel
 - 100% rebate of City's portion of property tax: \$592,564 max. over 10 years

- Parking Subsidy
 - \$150,000/YR; \$1,500,000 max. over 10 years

- Event Room Block
 - \$75,000/YR; \$750,000 max. over 10 years

- Sales & Use; Mixed Beverage Tax Incentives:
 - 100% rebate of City's portion; \$216,715 max. over 10 years

- Shared Parking Agreement:
 - Use of City Hall parking lot for hotel overflow parking from 6pm to 6am Monday - Thursday and all day Friday – Sunday (10 year period)



Proposed project: 325 N. Kansas (cont.)

Incentive Summary

- Maximum City Incentives (Hotel): \$2,842,564
- Maximum City Incentives (Retail) \$216,715

*If this project followed the normal Sustainable City Centers Incentive, the City's 10 year contribution would be approximately \$809,709 (10%)

Estimated Cash Flow - prior to incentives

- Estimated 10 year cash flow before incentives(-\$3,264,744)
- Estimated annual 10 year cash flow before incentives range from (-\$455,000) to (-\$278,000)

Estimated Cash Flow – with City Incentives

- Estimated 10 year cash flow after incentives (\$400,704)
- Estimated annual 10 year cash flow after incentives range from (-\$127,387) to (\$30,151)



Proposed project: 325 N. Kansas (cont.)

Projected Return on Investment (ROI)

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Net Income before Debt Service	\$ (455,914.00)	\$(275,142.00)	\$(226,466.00)	\$ (211,076.00)	\$ (203,003.00)	\$ (191,191.00)	\$ (179,310.00)	\$ (169,215.00)	\$ (157,175.00)	\$ (149,766.00)
Net Income after Incentives	\$ (90,589.00)	\$ 90,646.00	\$ 139,761.00	\$ 155,677.00	\$ 164,226.00	\$ 176,549.00	\$ 189,416.00	\$ 200,050.00	\$ 212,658.00	\$ 220,611.00
ROI Before Incentives	-16%	-10%	-8%	-8%	-7%	-7%	-6%	-6%	-6%	-5%
ROI after Incentives	-3%	3%	5%	6%	6%	6%	7%	7%	8%	8%

Profit Sharing Provision

- ❖ If Summit 11 were to sell the property within the initial five (5) years and realizes a profit from the sale, the City shall be entitled to share in the Net Profit.
 - City’s profit share: 38.24% (based on ration of the City’s proposed incentives) minus seller’s closing costs
 - Summit 11 to submit updated annual reports to City Manager documenting acquisition costs, design/construction, expenses, franchise fees, etc.



Proposed project: 325 N. Kansas (cont.)

Additional Contract Terms:

- 15% annual ROI cap for term of incentive
- Property purchase complete within 90 days from approval of agreement
- Commence construction within 6 months
- Construction complete and Certificate of Occupancy within 24 months from date of approval
- Minimum annual occupancy and average daily rate
- Hotel brands limited to: Marriot, Starwood, IHG or Hilton
- Standard default provisions for bankruptcy, closure or loss of brand
- Maintenance standards for use of City Parking Lot
- Preference for local manufacturers, suppliers, contractors and labor for hotel construction