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

DEPARTMENT: City Development

AGENDA DATE: 06/04/2013

CONTACT PERSON/PHONE: Mathew McElroy, City Development (915) 541-4193

DISTRICT(S) AFFECTED: 8

SUBJECT:
That the City Manager be authorized to sign the Chapter 380 Economic Development Program Agreement by and between the City of El Paso and Martin Building, LLC for the redevelopment of a building at 215 Stanton and construction on the adjacent vacant lot at 212 Mills for use as residential and commercial space. (District 8) [City Development, Mathew McElroy (915) 541-4193]

BACKGROUND/DISCUSSION:
The applicant, Martin Building LLC, proposes to redevelop the property located at 215 Stanton, known as the Martin Building and construction on the adjacent vacant lot on 212 Mills, referred to as the Martin Building Annex for the use of residential and commercial space. 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, and a ten (10) year guaranteed subsidy for the redevelopment of the properties 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: _____

(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 Martin Building, LLC.

ADOPTED this the _____ day of _____ 2013.

THE CITY OF EL PASO

_____
John F. Cook
Mayor

ATTEST:

_____
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

Document #: 181088 / Matter #: 13-1007-750
Document Name: Reso-2013-Martin Bldg
Document Author: MKB

STATE OF TEXAS)
)
COUNTY OF EL PASO)

CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

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

WHEREAS, the MARTIN BUILDING 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, incentives to MARTIN BUILDING to renovate, restore and rehabilitate the commercial property located at 215 Stanton Avenue and construct a property to be located at 212 Mills Avenue in El Paso, Texas, such project being more specifically described on **EXHIBIT A** and **EXHIBIT B** attached hereto (the "Developments"); 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 MARTIN BUILDING will serve the public purpose of enhancing the value of the local tax base and foster and support economic growth and opportunity and to ensure new investments will market the area as a thriving place to work, live and visit; and

WHEREAS, the CITY and MARTIN BUILDING desire the redevelopment of the Properties and the CITY has further determined that the Developments will advance the CITY'S revitalization strategy for the future growth and development of the downtown area which is the economic heart of the CITY and directly and indirectly results in the creation of additional jobs in the City of El Paso and stimulate commercial activity in an underdeveloped area, the value of such benefits to the CITY outweighing the amount of Grant funds the CITY will provide to MARTIN BUILDING under this Agreement; and

WHEREAS, the Developments in the manner more fully described in this Agreement will encourage increased economic development in the City of El Paso's historic downtown core, result in significant increases in the CITY'S property tax revenues, sales tax revenues, and improve the CITY'S ability to provide for the health, safety and welfare of the citizens of El Paso and creating an area with quality and thriving places to work, live and visit; and

WHEREAS, the construction of the Developments in the manner more fully described in this Agreement shall be in accordance with the guidelines set forth in the City of El Paso Economic Development Incentive Policy; and

WHEREAS, the building generally located at 215 Stanton and more specifically described in **EXHIBIT A** is Landmark Building within the downtown historic district; 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 MARTIN BUILDING.

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. 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 Agreement, together with all exhibits and schedules attached to this Agreement.

B. **Base Year Value.** The words "Base Year Value" mean valuation by the El Paso Central Appraisal District as of 2013 for the Properties.

C. **City.** The word "CITY" means the City of El Paso, Texas.

D. **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.

E. **Developments.** The word "Developments" means the renovation, restoration, and rehabilitation of the Mixed Use Property more specifically described in **EXHIBIT A** and the construction of the Private Commercial Property more specifically described **EXHIBIT B.** Both exhibits are attached hereto and incorporated herein for all purposes.

F. **Downtown Plan**. The words "Downtown Plan" means the Downtown 2015 Plan adopted by El Paso City Council on October 31, 2006, and incorporated into the Comprehensive Plan pursuant to the provisions of Section 213.002 of the Texas Local Government Code.

G. **Grant.** The word "Grant" means each annual payment to MARTIN BUILDING under the terms of this Agreement computed as the sum of the applicable rebates: (i) Property Tax Rebate and (ii) Ground Floor Sales & Use Tax Rebate.

H. **Grant Submittal Package.** The words "Grant Submittal Package" mean the documentation required to be supplied to CITY on a yearly basis as a condition of receipt of any Grant, with such documentation more fully described in **EXHIBIT C**, which is attached hereto and incorporated herein for all purposes.

I. **Ground Floor Retail Sales & Use Tax Rebate**. The words "Ground Floor Retail Sales and Use Tax Rebate" means 100% rebate of the CITY'S one percent (1%) Sales and Use Tax Receipts generated by and attributable solely to Retailer sales of Taxable Items consummated at the Properties located in the Developments in the immediately prior calendar year and remitted from the State Comptroller to the City.

J. **Historic Renovation Subsidy.** The words "Historic Renovation Subsidy" mean the annual payment of One Hundred Ninety Thousand and 00/100 Dollars ($190,000.00) to be paid to MARTIN BUILDING from the CITY'S Community Adjustment and Investment Program Fund ("CAIP Fund") and next from the CITY'S 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.

K. **Mixed Use Property.** The words "Mixed Use Property" mean the approximately forty two thousand (42,000) of square feet for retail and commercial space on the first two (2) floors of the building and one (1) and two (2) bedroom apartments on the remaining five (5) floors, more specifically described in **EXHIBIT A**.

L. **Private Commercial Property.** The words "Private Commercial Property" mean the approximately eleven thousand (11,000) square feet for commercial and retail space containing at least six (6) suites, more specifically described in **EXHIBIT B**,

M. **Properties.** The word "Properties" means approximately forty two thousand (42,000) square feet of real property located at 215 Stanton Avenue in El Paso, Texas, more specifically described on **EXHIBIT A**, and the eleven thousand (11,000) square feet of real property located at 212 Mills Avenue in El Paso, Texas, more specifically described in **EXHIBIT B**. Both exhibits are incorporated herein by reference for all purposes of this Agreement.

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 Developments above the Base Year Value for the Grant Period and payable from the CITY'S CAIP Fund and next from the CITY'S Impact Fund.

O. **Retailer(s).** The word "Retailer(s)" means tenants and lessees of the Property in the Developments required by the State Comptroller to collect Sales and Use Tax on the sale of Taxable Items consummated in the City at the Property in the Development.

P. **Sales and Use Tax.** The words "Sales and Use Tax" mean the CITY'S one percent (1%) sales and use tax imposed pursuant to Chapter 321 of the Texas Tax Code on the sale of Taxable Items by Retailers consummated at the Properties located in the Developments and

remitted to the CITY by the State Comptroller, to be used only as a measurement for computation of the Grant to be paid through the use of general funds.

Q. **Sales Tax Receipts.** The words "Sales Tax Receipts" mean CITY'S receipt of Sales and Use Tax revenue remitted from the State Comptroller based upon the Retailers' collection of Sales and Use Tax during the term of this Agreement, which are generated by and solely attributable to the Retailers' sale of Taxable Items consummated at the Properties located in the Developments in El Paso, Texas.

R. **State Comptroller.** The words "State Comptroller" mean the office of the Texas Comptroller of Public Accounts.

S. **Taxable Items.** The words "Taxable Items" have the same meaning assigned in Chapter 151, Texas Tax Code.

SECTION 2. TERM AND GRANT PERIOD.
The term of this Agreement shall commence on the Effective Date (as hereinafter defined) and shall terminate on the first to occur: (i) the date when the Grant is fully paid; (ii) thirteen (13) years from the Effective Date, (iii) the proper termination of this Agreement in accordance with the applicable provisions contained herein or (iv) termination by mutual consent of the parties in writing. The Effective Date of this Agreement shall be the date upon which both parties have fully executed this Agreement. However, MARTIN BUILDING's eligibility for annual Grant payments and Historic Renovation Subsidies shall be limited to ten (10) consecutive years. The Grant Period shall begin with the the first tax year that begins after the issuance of the Certificate of Occupancy for the Developments. The CITY shall review MARTIN BUILDING's eligibility for Grant Payments on an annual basis during the Grant Period.

SECTION 3. OBLIGATIONS OF MARTIN BUILDING.
In consideration of CITY agreeing to pay the Grant and Historic Renovation Subsidy in accordance with the terms, provisions and conditions of this Agreement, MARTIN BUILDING agrees to the following, which are not obligations of MARTIN BUILDING, but are terms and conditions that must be fulfilled in order to receive the Grant:

A. **DEVELOPMENTS.**

(1) MARTIN BUILDING agrees to redevelop and construct, at its sole cost, the Developments. MARTIN BUILDING must obtain the building permits for the Developments within six (6) months from the Effective Date of this Agreement and a Certificate of Occupancy for the Developments within twenty four (24) months from the Effective Date of this Agreement. MARTIN BUILDING must factor into its construction timeline a sixty (60) day response time from the Texas Historic Commission (THC) to the notice it must provide THC in accordance with Texas Government Code section 442.006(f). If MARTIN BUILDING provides such timely notice to THC, and THC fails to respond within sixty (60) days, any delays in meeting either the six (6) month deadline to receive building permits for the Developments or the twenty four (24) month deadline to receive a Certificate of Occupancy for the Developments will not

result in termination of this Agreement, and the terms of this Agreement may be extended in a written amendment to this Agreement in order to accommodate for such delay.

(2) MARTIN BUILDING agrees that the Developments shall not include the demolition of properties with a historic overlay that are deemed historic or contributing unless specifically approved by El Paso City Council.

(3) MARTIN BUILDING agrees that renovation and construction shall be in accordance with the requirements and review provisions of Chapter 20.20 (Historic Landmark Preservation) of the City municipal code, where applicable.

(4) MARTIN BUILDING agrees that the construction and renovation of the Developments will adhere to the design guidelines outlined in the Comprehensive Plan and the Downtown Plan.

(5) MARTIN BUILDING agrees that it shall make or cause to be made, at its sole cost and expense or the expense of third parties, a minimum investment of Five Million One Hundred Ninety One Thousand and 00/100 Dollars ($5,191,000.00) on the redevelopment of the Mixed Use Property and a minimum investment of One Million Four Hundred Ninety One Thousand and 00/100 Dollars ($1,491,000.00) on the construction of the Private Commercial Property.

(6) MARTIN BUILDING shall pay by January 31 of each year all of the real and business personal ad valorem taxes due for the previous tax year on the Developments and any other property within the City of El Paso. MARTIN BUILDING must demonstrate that it has incurred no delinquent taxes by providing certified city tax certificates for each parcel of property owned in the City of El Paso. MARTIN BUILDING shall have the right to contest the appraised value of the Development as provided by law. However, MARTIN BUILDING 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.

(7) MARTIN BUILDING must obtain an eighty percent (80%) occupancy rate for both its commercial and residential space within two years of receiving the Certificate of Occupancy for the Developments and must maintain such for the remaining term of this Agreement.

(8) MARTIN BUILDING agrees that the Developments' commercial and residential space must meet and maintain "Class A" specifications throughout the term of this Agreement. The Developments must meet all code requirements throughout the term of this contract and have no code violations on record.

(9) MARTIN BUILDING must ensure that its commercial tenants have no more than two (2) police department responses per month to calls regarding noise violations or other disturbances to the peace resulting from activities at the commercial establishments located at the Developments during the term of this Agreement.

B. **RETAILERS REPORT.** During the term of this Agreement beginning after the issuance of the Certificate of Occupancy for the Developments, MARTIN BUILDING shall provide the CITY, and maintain during the term of this Agreement: a list of each Retailer that occupies or occupied the Development during the Grant Period including the taxpayer identification number, taxpayer outlet number (as shown on the Texas Sales Tax Permit), 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 for the Grant Period (the "Retailers Report").

D. **DISBURSEMENT OF GRANT.**

(1) During the term of this Agreement and beginning as of the commencement of the Grant Period and ending ten years thereafter, or at termination, whichever comes first, and subject to the conditions contained in this Agreement, MARTIN BUILDING shall be eligible to receive on a yearly basis the Grant payment.

(2) MARTIN BUILDING'S eligibility for any Grant payment is expressly contingent upon MARTIN BUILDING'S satisfaction of the requirements of Section 3 of this Agreement. Under no circumstance shall MARTIN BUILDING be entitled to receive the Grant unless it satisfies all the requirements of this Agreement. MARTIN BUILDING agrees to provide the CITY with any documentation the CITY may reasonably require or request to substantiate the MARTIN BUILDING'S compliance with this Agreement.

(3) In order to receive the disbursement of the Grant, MARTIN BUILDING must submit a Grant Submittal Package, as specified in Section 3(E) below.

E. **GRANT SUBMITTAL PACKAGE.**

(1) Unless otherwise agreed by the CITY and MARTIN BUILDING in writing, MARTIN BUILDING shall annually submit one Grant Submittal Package in the form provided in **EXHIBIT C**, together with the requisite documentation. No later than July 31, 2016, MARTIN BUILDING shall submit to the CITY the initial Grant Submittal Package to commence the Grant Period. Thereafter, MARTIN BUILDING'S annual Grant Submittal Package must be submitted no later than July 31 of each year.

(2) If MARTIN BUILDING shall fail to timely submit a Grant Submittal Package for a particular year, then the CITY may, but is not obligated to, give MARTIN BUILDING written notice of its failure to timely submit such Grant Submittal Package, and MARTIN BUILDING shall have thirty (30) calendar days calculated from the date on which such written notice is given in which to submit such Grant Submittal Package. Failure to timely submit a Grant Submittal Package is a waiver of the Grant due to MARTIN BUILDING for the period that would have been covered by a timely submitted Grant Submittal Package. The CITY'S determination of the amount of the Grant payment due to MARTIN BUILDING is final; provided, however MARTIN BUILDING may appeal to the 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 payment shall be final; provided, however, nothing herein shall limit (or be construed to limit) MARTIN BUILDING'S rights and remedies under this Agreement.

F. **WAIVERS OF SALES TAX CONFIDENTIALITY.**

(1) MARTIN BUILDING shall cause the Retailers to provide the CITY and MARTIN BUILDING, and the MARTIN BUILDING shall maintain during the term of this Agreement a Waiver of Sales Tax Confidentiality ("Confidentiality Waiver") from each Retailer. The Confidentiality Waiver authorizes the State Comptroller to release to the CITY and MARTIN BUILDING Sales and Use Tax information pertaining to the sale of Taxable Items by Retailers at the Properties in the Developments during the term of this Agreement substantially in the form attached hereto as **EXHIBIT D**. MARTIN BUILDING will be responsible for obtaining the Confidentiality Waivers from Retailers and providing the Confidentiality Waivers to the CITY. MARTIN BUILDING shall cause the Retailers to maintain effective Confidentiality Waivers during the term of this Agreement. 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 payment confirmation from the State Comptroller.

(2) 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 MARTIN BUILDING is eligible to receive. For any particular Grant Submittal Package and Grant amount determination, the CITY shall only consider the Sales and Use 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.

(3) While agreement is in effect, MARTIN BUILDING shall, upon request of CITY, provide such additional documentation as may be reasonably requested by the CITY to evidence, support and establish the Sales and Use Tax Receipts.

G. **PROFIT SHARING**

(1) As additional consideration for the benefits provided by this Agreement, MARTIN BUILDING agrees that if the Developments are sold to a third party during the term of this Agreement, and MARTIN BUILDING realizes a profit from the sale of the Developments, 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 MARTIN BUILDING'S basis in the Developments. Within six (6) months after the completion of construction and the commencement of operations of the Developments, MARTIN BUILDING shall submit a written document detailing its basis calculation for the property including the acquisition costs, design and construction expenses, franchise fees, etc. MARTIN BUILDING shall update this calculation annually and provide the CITY an updated calculation annually. The City

Manager shall review and approve the expenses and MARTIN BUILDING'S basis calculation for the purposes of this section only. In the event MARTIN BUILDING fails to submit a proposed basis figure within the time period specified herein, MARTIN BUILDING'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 Developments is received during the term of this Agreement.

(2) The CITY'S share of the profits shall be 40.92% (Profit Sharing Percentage) of the Net Profit. This is a negotiated figure calculated using a ratio of the proposed incentives of Two Million Seven Hundred Thirty Four Thousand Eight Hundred and 00/100 Dollars ($2,734,800.00) and the projected project costs of developing and constructing the Developments of Six Million Six Hundred Eight Three Thousand Five Hundred and 00/100 Dollars ($6,683,500.00). This number may be adjusted by the actual costs incurred by MARTIN BUILDING in developing and constructing the Developments and documented within the time period specified above.

(3) A sale of the majority interest in MARTIN BUILDING, an interest of 51% or greater that holds a fee title to the Properties, 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 MARTIN BUILDING 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 MARTIN BUILDING, in his individual capacity, affixed to this Agreement is for the limited purpose of evidence of her knowledge and agreement with this Section 3(G)(3).

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 herein (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. The CITY agrees to process any Grant Payments to MARTIN BUILDING within ninety (90) days after its approval of the MARTIN BUILDING's Grant Submittal Package.

B. The CITY shall determine the total amount of Grant payments due to the MARTIN BUILDING, if any, on an annual basis. Provided the MARTIN BUILDING satisfies all the requirements of this Agreement, MARTIN BUILDING shall be eligible for the annual Grant payment. Under no circumstances shall the total aggregate of Grant payments exceed the total value of the CITY'S portion of the sales and use tax generated by the Properties and the incremental ad valorem property tax revenue generated by the subject property in the Project above the Base Year Value for the Grant Period or Seven Hundred Fifty Four Thousand Nine Hundred Eighty Six and 00/100 Dollars ($754,986.00).

C. The CITY shall pay annually to MARTIN BUILDING the Historic Renovation Subsidy on the same date as it is obligated to pay the Grant. Under no circumstances shall the total aggregate Historic Renovation Subsidy be greater than One Million Nine Hundred Thousand Dollars and 00/100 Dollars ($1,900,000.00).

D. The CITY agrees to promptly process and remit to MARTIN BUILDING 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, MARTIN BUILDING 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. **False Statements.** In the event the MARTIN BUILDING 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 MARTIN BUILDING 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 MARTIN BUILDING 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 MARTIN BUILDING obtains actual knowledge that any previously provided warranty, representation or statement has become false or misleading after the time that it was made, and MARTIN BUILDING 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 MARTIN BUILDING 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 Grant Payments and Historic Renovation Subsidies previously provided by the CITY pursuant to this Agreement shall be recaptured and repaid by MARTIN BUILDING within sixty (60) days from the date of such termination.

B. **Insolvency.** The dissolution or termination of MARTIN BUILDING's existence as a going business or concern, MARTIN BUILDING'S insolvency, appointment of receiver for any part of MARTIN BUILDING'S portion of the Property, any assignment of all or substantially all of the assets of MARTIN BUILDING for the benefit of creditors of MARTIN BUILDING, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against MARTIN BUILDING 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.

C. **Construction of Development.** MARTIN BUILDING's failure to comply with its construction obligations set forth in this Agreement and MARTIN BUILDING's failure to cure same within thirty (30) days after written notice from the CITY 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 MARTIN BUILDING fails or refuses to commence such cure within such thirty (30) day period or fails or refuses to continuously thereafter diligently prosecute such cure, except to the extent such failure is caused by any act or failure to act on the part of the CITY, such actions or omissions shall be deemed events of default.

D. **Historic Landmark Preservation.** MARTIN BUILDING's failure to comply with the requirements and review provisions of Chapter 20.20 (Historic Landmark Preservation) of the City municipal code and MARTIN BUILDING's failure to cure same within thirty (30) days after written notice from the CITY 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 MARTIN BUILDING fails or refuses to commence such cure within such (30) day period or fails or refuses to continuously thereafter diligently prosecute such cure, except to the extent such failure is caused by any act or failure to act on the part of the CITY, such actions or omissions shall be deemed event of default. In the event this Agreement is terminated pursuant to this Section, all Grant Payments and Historic Renovation Subsidies previously provided by the CITY pursuant to this Agreement shall be recaptured and repaid by MARTIN BUILDING within sixty (60) days from the date of such termination.

E. **Property Taxes.** Prior to the receipt of any reimbursement grant payments under this incentive program, the MARTIN BUILDING must demonstrate that it has incurred no delinquency taxes by providing certified city tax certificates for each parcel of property owned in the City of El Paso. In the event MARTIN BUILDING 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. Subject to the restrictions noted herein, MARTIN BUILDING shall have the right to contest the appraised value of the Development provided however, the MARTIN BUILDING agrees that it will not contest or allow any party to contest on its behalf a value of less than Base Year Value which the parties have agreed is the minimum value for tax purposes. MARTIN BUILDING's failure to comply with this prohibition against maintaining the minimum tax value shall constitute an event of default and may result in a termination of this Agreement.

F. **Other Defaults.** Failure of MARTIN BUILDING or CITY to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any related documents, and MARTIN BUILDING or CITY 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 MARTIN BUILDING or CITY 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.

G. **Failure to Cure.** If any event of default by MARTIN BUILDING shall occur, and after MARTIN BUILDING 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.

SECTION 6. TERMINATION OF AGREEMENT BY CITY WITHOUT DEFAULT OF MARTIN BUILDING.

The CITY may terminate this Agreement for its convenience and without the requirement of an event of default by MARTIN BUILDING, 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 MARTIN BUILDING's Rights.** MARTIN BUILDING understands and agrees that the CITY expressly prohibits MARTIN BUILDING from selling, transferring, assigning or conveying in any way any rights to receive the Grant 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 MARTIN BUILDING to cure.

D. **MARTIN BUILDING's Sale or Transfer of the Developments.** Prior to any sale or other transfer of ownership rights in the Developments, MARTIN BUILDING 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 and all Grant Payments and Historic Renovation Subsidies previously provided by the CITY pursuant to this Agreement shall be recaptured and repaid by MARTIN BUILDING within sixty (60) days from the date of such termination.

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 MARTIN BUILDING's behalf warrants and represents that he or she has full authority to execute this Agreement and bind MARTIN BUILDING to the same.

F. **Completion of Development.** As consideration for the agreements of the CITY as contained herein, MARTIN BUILDING agrees that it will diligently and faithfully in a good and workmanlike manner pursue the completion of the Developments and that the construction of same will be in accordance with all applicable federal, state and local laws and regulations. MARTIN BUILDING will also ensure that the architect hired to design the Developments is a licensed architect.

G. **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.

H. **Employment of Undocumented Workers.** During the term of this Agreement, MARTIN BUILDING 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), MARTIN BUILDING shall repay the amount of the Grant payments received by MARTIN BUILDING from the CITY as of the date of such violation not later than one hundred twenty (120) days after the date MARTIN BUILDING is notified by CITY of a violation of this section, plus interest from the date the Grant payment(s) was paid to MARTIN BUILDING, at the rate of seven percent (7%) per annum. The interest will accrue from the date the Grant payment(s) were paid to MARTIN BUILDING until the date the reimbursement payments are repaid to CITY. CITY may also recover court costs and reasonable attorney's fees incurred in an action to recover the Grant payment(s) subject to repayment under this section. MARTIN BUILDING is not liable for a violation by its subsidiary, affiliate, or franchisee, or by a person which whom MARTIN BUILDING contracts.

I. **Filing.** The CITY shall file this Agreement in the deed records of El Paso County, Texas upon MARTIN BUILDING's request and payment of all recordation costs.

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. **Limited Return on Investment (ROI).** During the term of this Agreement if MARTIN BUILDING realizes an ROI in excess of twelve percent (12%) per annum, the total

package of incentives arising from this Agreement shall be reduced by an amount to result in a yield of only twelve percent (12%) per annum.

L. **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
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

MARTIN BUILDING: Lane Gaddy
1720 Magoffin Ave
El Paso, TX 79901

M. **Ordinance Applicability.** The signatories hereto shall be subject to all ordinances of the CITY, whether now existing or in the future arising

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.

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

(SIGNATURES BEGIN ON THE FOLLOWING PAGE)

CITY OF EL PASO, TEXAS

_____
Joyce A. Wilson
City Manager

APPROVED AS TO FORM:

_____
Matthew K. Behrens
Assistant City Attorney

APPROVED AS TO CONTENT:

_____
Mathew McElroy, Director
City Development Department

ACKNOWLEDGMENT

STATE OF TEXAS §
§
COUNTY OF EL PASO §

This instrument was acknowledged before me on the ____ day of _____, 20__, by **Joyce A. Wilson**, as **City Manager** of the **City of El Paso, Texas** (CITY).

_____
Notary Public, State of Texas

My Commission Expires:

_____

(SIGNATURES CONTINUE ON FOLLOWING PAGE)

MARTIN BUILDING, LLC:

_____

Name: Lane Gaddy
Title: Managing Member

LANE GADDY AS MAJORITY MEMBER OF MARTIN BUILDING, LLC IN HIS INDIVIDUAL CAPACITY

_____

Lane Gaddy

ACKNOWLEDGMENT

STATE OF _____§
§
COUNTY OF _____§

This instrument was acknowledged before me on the ____ day of _____, 20___, by _____, as _____ of **MARTIN BUILDING, LLC**, a Texas limited liability company, and in his individual capacity.

_____

Notary Public, State of _____

My Commission Expires:

_____

EXHIBIT A

[Mixed Use Property Legal Description / Development Description]

Legal Description

4 Mills 70 Ft on Mills X 88.667 Feet Beginning 50 Feet East of Northwest Corner (East 70 Feet of 22) (6,067 Square Feet)

Development Description

A seven story building containing at least forty two thousand (42,000) square feet. The first two (2) floors shall be dedicated to commercial and retail space, while the remaining five (5) floors shall be dedicated to one (1) bedroom apartments with a minimum square footage of four hundred fifty (450) square feet and two (2) bedroom apartments with a minimum square footage of eight hundred fifty (850) square feet.

EXHIBIT B

[Private Commercial Property Legal Description / Development Description]

Legal Description

4 Mills 60 Feet on Mills X 100 Feet Beginning 60 Feet West of Northeast Corner (6,000 Square Feet)

Development Description

A two story building containing at least eleven thousand (11,000) square feet with the two floors dedicated to retail and commercial space. The building shall contain at least four (4) suites.

EXHIBIT C

[Grant Submittal Package Form]

MARTIN BUILDING, LLC (MARTIN BUILDING) believes that it has substantially met its obligations under the Chapter 380 Agreement dated the ____ day of _____, 20___ and signed by _____ of **MARTIN BUILDING**. Pursuant to the Agreement, **MARTIN BUILDING** submits this Grant Submittal Package Form 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.

1. Site Development plan approvals;
2. Property tax payment receipts for the Properties;
3. Proof of ownership for subject Properties;
4. Copies of all applicable approvals and permits;
5. Documentation to evidence the amount of sales taxes paid as a result of the sales of Taxable Items by Retailers at the Properties;
6. Retailers Report;
7. Waiver of Sales Tax Confidentiality Forms for Retailers on the Retailers Report;
8. Documentation to evidence minimum investment to date and not previously verified;
9. Documents showing the ownership interest in MARTIN BUILDING, LLC including any reports issued to the Texas Comptroller in conjunction with the filing of its Texas Franchise Return;
10. MARTIN BUILDING's basis calculation for the Developments.

It is understood by _____ that the City of El Paso has up to 60 days to process this request and reserves the right to deny the Grant request if the company has not complied with the terms of the Agreement.

Signature: _____

EXHIBIT D

Waiver of Sales Tax Confidentiality

Date_____

I authorize the State of Texas Comptroller of Public Accounts to release sales 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:

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 in El Paso, Texas:

_____

Texas Taxpayer ID Number
Tax Outlet Number
(As shown of Texas Sales Tax Permit)

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. If you have any questions concerning this waiver of confidentiality, please contact the Texas Comptroller of Public Accounts at (800) 531-5441.