

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

DEPARTMENT: Planning and Economic Development

AGENDA DATE: Consent Agenda – September 13, 2011

CONTACT PERSON/PHONE: Ernesto Gamboa, Deputy Director 541-4811

DISTRICT(S) AFFECTED: [ALL]

SUBJECT:

That the City Manager be authorized to sign an Estoppel Certificate with respect to the Chapter 380 Economic Development Program Agreement dated October 31, 2006, by and between the City of El Paso and El Paso Outlet Center, LLC. [All Districts][Planning and Economic Development – Ernesto Gamboa, Deputy Director 915 541 4811]

BACKGROUND/DISCUSSION:

El Paso Outlet Center LLC is asking the City for an Estoppel certificate in order to induce RCG LV Debt IV REIT L.P. to make a preferred equity investment in El Paso Outlet Center LLC.

PRIOR COUNCIL ACTION:

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

Yes – Oct 31, 2006 council approved Chapter 380 Agreement with El Paso Outlet Center LLC. This contract is now terminated as terms of the contract have been met.

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?

No impact on the General Fund

BOARD/COMMISSION ACTION:

Enter appropriate comments or N/A.

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 an Estoppel Certificate with respect to the Chapter 380 Economic Development Program Agreement dated October 31, 2006, by and between the City of El Paso and El Paso Outlet Center, LLC.

APPROVED AND ADOPTED this ____ day of _____, 2011.

CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Marie A. Taylor
Assistant City Attorney

APPROVED AS TO CONTENT:



Mathew S. McElroy, Deputy Director
Planning and Economic Development

ESTOPPEL CERTIFICATE

Property: The "Property", as such term is defined in the Agreement (defined below) (the "**Property**")

Borrower: El Paso Outlet Center Holding, LLC ("**Company**")

Preferred Member: RCG LV Debt IV REIT L.P., and its successors and assigns ("**Preferred Member**")

Date: September __, 2011

In order to induce Preferred Member to make a preferred equity investment (the "**Preferred Investment**") in Company, which is the direct and indirect holder of 100% of the membership interests in El Paso Outlet Center LLC ("**Owner**"), the undersigned hereby certify, warrant, represent and agree, as of the date hereof, as follows:

The following document is referred to herein as the "**Agreement**": Chapter 380 Economic Development Program Agreement, dated as of October 31, 2006, by and between the City of El Paso, Texas (the "**City**"), and El Paso Outlet Center, LLC. Capitalized terms used herein but not defined herein shall have the meanings ascribed to such terms in the Agreement.

1. Except as set forth above, the terms and provisions of the Agreement are unmodified and the Agreement has expired by its own terms.
2. There exists no default under, violation of, or failure to comply with the Agreement, and no event has occurred that with the giving of notice or the lapse of time, or both, would constitute a default under, violation of, or failure to comply with the Agreement by any party thereto.
3. All obligations under the Agreement required to be performed prior to the date hereof have been completed, and the undersigned are not performing any work for which it expects reimbursement by Owner.
4. The undersigned have neither sent nor received any notice of default or other demand under the Agreement which has not been fully cured or satisfied.
5. All approvals, if any, required under the Agreement with respect to the Property have been obtained.
6. All amounts due from Owner under the Agreement, if any, have been paid in full to and including the date hereof.

7. The undersigned have no claim of lien against the Property or set-off or other claims or defenses being asserted against Owner under the Agreement.

8. The undersigned are duly authorized to sign and deliver this Estoppel Certificate, and that no other signatures are required or necessary in connection with the execution and validity of this Estoppel Certificate.

9. This Estoppel Certificate shall have the effect of estopping the undersigned from making any assertions contrary to the contents hereof; and shall serve as a waiver of any claim by the undersigned to the extent that such claim is asserted against any person permitted to rely upon, and who has acted in reliance upon, this Estoppel Certificate.

10. This Estoppel Certificate shall inure to the benefit of Preferred Member, and shall be binding upon the heirs, personal representatives, successors, and assigns of the undersigned.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned parties have caused this Estoppel Certificate to be executed as of the day and year first written above.

THE CITY OF EL PASO

By: _____
Name: Joyce Wilson
Title: City Manager

Approved as to Form:



Marie Taylor
Assistant City Attorney
Director

Approved as to Content:



Mathew McElroy, Interim Director
Planning and Economic Development

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