

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

DEPARTMENT: Office of Economic Development

AGENDA DATE: October 31, 2006

CONTACT PERSON/PHONE: Lucille A. Ponticelli, Economic Development Manager 541 4679;
Javier Gadney, Business Services Coordinator 541 4673

DISTRICT(S) AFFECTED: ALL

SUBJECT:

Approve a Resolution authorizing City Manager Joyce Wilson to execute a 380 incentives agreement with El Paso Outlet Center LLC SV 0803-1.

BACKGROUND/DISCUSSION:

The developers of SV-0803-1 outlet mall seek incentives to support their development. This project has been heard by the LRC (July 27 06) and by Council in Executive Session on August 8, 06 and September 12, 2006. The Econ Dev Dept has completed negotiations and is bringing forth a Resolution authorizing City Manager Joyce Wilson to execute a 380 incentive agreement.

PRIOR COUNCIL ACTION:

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

YES

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?

380 Sales Tax Rebate Agreement

BOARD/COMMISSION ACTION:

Enter appropriate comments or 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 OF EL PASO:

That the City Manager be authorized to sign a Chapter 380 Economic Development Agreement between the City of El Paso ("City") and El Paso Outlet Center LLC, a Delaware Limited Liability Corporation ("Applicant") to provide for a grant from the City to the Applicant in an amount not to exceed \$1,250,000.00 in connection with the construction of the Sun Valley Factory Shoppes ("Outlet Center") and the voluntary annexation of the property upon which the Outlet Center will located and other obligations contained therein.

ADOPTED the _____ day of _____, 2006.

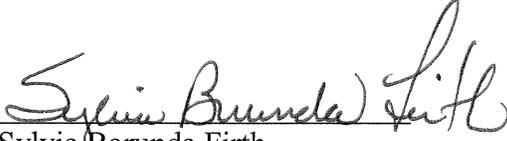
City of El Paso

By: _____
John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Sylvia Borunda Firth
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



Lucille A. Ponticelli
Economic Development Manager

06 OCT 25 AM 2:21
CITY CLERK DEPT.

CITY CLERK DEPT.
06 OCT 24 PM 11:55

**CITY OF EL PASO
AND
EL PASO OUTLET CENTER, LLC**

**CHAPTER 380 ECONOMIC DEVELOPMENT
PROGRAM AGREEMENT**

This **CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AND AGREEMENT** "Agreement") is made and entered into by and between the **CITY OF EL PASO, TEXAS** a Texas home rule municipal corporation, ("**CITY**"), and **EL PASO OUTLET CENTER, LLC**, a Delaware Limited Liability Company, (the "**APPLICANT**") for the purposes and considerations stated below:

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

WHEREAS, the **CITY** desires to provide, pursuant to Chapter 380, an incentive to **APPLICANT** to develop the Sun Valley Factory Shoppes ("Outlet Center") described on Exhibit "A" attached hereto;

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;

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

WHEREAS, the **CITY** and **APPLICANT** desire the development of the Outlet Center;

WHEREAS, the creation of the Outlet Center 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;

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 **APPLICANT**.

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.

Except as otherwise provided herein, the term of this Agreement shall commence on the Effective Date (as hereinafter defined) and shall terminate on the first to occur of (i) the date when the **GRANT** is fully paid and (ii) the proper termination of this Agreement in accordance with Section 7.1 or Section 7.2 (the "**TERM**").

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 and incorporated herein by reference.
- (b) **APPLICANT.** The word "**APPLICANT**" means El Paso Outlet Center, LLC in care of Horizon Group Properties Inc, a Maryland corporation. For the purposes of this Agreement, **APPLICANT**'s address is 6250 N. River Rd., Ste. 10400, Rosemont, IL 60018 ATTN: Gary Skoien.
- (c) **CITY.** The word "**CITY**" means the City of El Paso, Texas. For purposes of this Agreement, City's address is City of El Paso, 2 Civic Center Plaza, El Paso, Texas 79901-1196, ATTN: City Manager.
- (d) **Development.** The word "**DEVELOPMENT**" means the Outlet Center described in **Exhibit "A-1"** attached hereto and fully incorporated herein by reference.
- (e) **GRANT.** The word "**GRANT**" means payment to **APPLICANT** under the terms of this Agreement computed with reference to Sales Taxes generated and paid by the **DEVELOPMENT** and payable from the **CITY'S** general revenue fund.
- (f) **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**, a copy of which is attached as **Exhibit "B"** to this Agreement.

- (g) **Qualified Expenditures.** The words "Qualified Expenditures" means those costs incurred by **APPLICANT** in the acquisition, construction or furnishing of the **DEVELOPMENT**.
- (h) **Property.** Sixty acres of real property located at Interstate-10 and Talbot Road (aka Transmountain Road) more fully described on Exhibit "A" attached hereto and incorporated herein by reference.

SECTION 3. OBLIGATIONS OF APPLICANT.

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

- (a) **DEVELOPMENT.** **APPLICANT** agrees to develop and construct, at its sole cost and expense, or the expense of its tenants, the Development described on **Exhibit "A-1"** and to expend a minimum of Forty Eight Million, Five Hundred Thousand Dollars (\$48,500,000.00) in Qualified Expenditures to acquire and construct the Development.

APPLICANT shall commence construction and or improvements within twelve (12) months of the effective date of this Agreement. **APPLICANT** shall substantially complete construction of the **DEVELOPMENT** and be open for business within eighteen (18) calendar months from the commencement of construction and/or improvements to the Outlet Center. Substantial completion shall mean the receipt of a certificate of occupancy from the City of El Paso for fifty percent (50%) of the leasable area in the outlet center. **APPLICANT** shall submit documentation to the **CITY** to verify the expenditure of a minimum amount of Forty Eight Million Five Hundred Thousand Dollars (\$48,500,000.00) in Qualified Expenditures within eighteen (18) months of the effective date of this Agreement.

- (b) **AMOUNT OF GRANT.** The total amount of the **GRANT** shall not exceed One Million Two Hundred Fifty Thousand and No/100 Dollars (\$1,250,000.00).
- (c) **DISBURSEMENT OF GRANT.** Upon completion of construction and submission of a completed Grant Submittal Package as specified in Section 3(d) below, **APPLICANT** shall be eligible to receive the first **GRANT** disbursement equal to the amount expended by **APPLICANT** to complete PSB related infrastructure and fees related to annexation, permits and inspections paid to the City of El Paso.

Thereafter, for each calendar quarter during the term of this Agreement and beginning in the second full or partial calendar quarter after the date **APPLICANT** first opens to business to the general public at the Outlet

Mall, the **APPLICANT** shall be entitled to receive a disbursement equal to 50% of the **CITY'S** one percent (1%) Sales and Use Tax revenue generated by and attributed solely to the **APPLICANT'S** sales at the **DEVELOPMENT** in the immediately prior calendar quarter and remitted from the State Comptroller to **CITY**. **APPLICANT'S** eligibility is expressly contingent upon **APPLICANT'S** satisfaction of the requirements of Section 3 of this Agreement. With the exception of the first **GRANT** disbursement that is intended to reimburse the **APPLICANT** for the PSB related development costs, the **GRANT** disbursements are limited to \$250,000.00 per year.

Grant Payments will continue until the total aggregate of all payments made shall reach \$1,250,000.00. Under no circumstance shall the **CITY** be required to disburse more than \$1,250,000.00 is the total amount of the **GRANT** nor shall **APPLICANT** be entitled to receive the **GRANT** unless it satisfies all the requirements of this Agreement.

- (d) **GRANT SUBMITTAL PACKAGE.** Unless otherwise agreed by the **CITY** and **APPLICANT**, each Grant Submittal Package shall be in the form attached hereto as **Exhibit "C"**. The Grant Submittal Package must be submitted no later than June 1st of each year. If **APPLICANT** shall fail to timely submit a Grant Submittal Package for a particular year, then the **CITY** may give **APPLICANT** written notice of **APPLICANT'S** failure to timely submit such Grant Submittal Package, and **APPLICANT** shall have sixty (60) calendar days calculated from the date on which such written notice is given in which to submit such Grant Submittal Package. The **CITY'S** determination of the amount of the **GRANT** payment due to **APPLICANT** is final; provided, however **APPLICANT** 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) **APPLICANT'S** rights and remedies as described in Section 5 and 6 of this Agreement.

APPLICANT will be responsible for collecting sales tax payment information from the tenants of the **DEVELOPMENT**. **CITY** will only use the information gathered and submitted by **APPLICANT** to the **CITY** in determining the amount of **GRANT** disbursement that applicant is eligible to receive. All such information will be verified by the **CITY** but the **CITY** shall have not obligation to request Waivers of Confidentiality, etc. from retailers in the **DEVELOPMENT** or otherwise collect sales tax information.

- (e) **PAYMENT OF TAXES.** **APPLICANT** shall pay by January 31 of each year all of the real and business personal ad valorem taxes assessed for the previous tax year on the **DEVELOPMENT** referenced in **Exhibit "A-1"** and the Property described on Exhibit "A". Provided, however

APPLICANT shall be entitled to protest such taxes in accordance with the provisions of applicable laws, rules and regulations.

- (f) **INTERNATIONAL MARKETING.** **APPLICANT** shall expend a minimum of Fifty Thousand Dollars (\$50,000.00) per year during the Term of this Agreement commencing in the first full calendar year in which the **DEVELOPMENT** is open for business to the general public on advertising and marketing targeted to attract shoppers from the interior of Mexico to the **DEVELOPMENT**.

Upon filing the Grant Submittal Package, **APPLICANT** shall also provide sufficient documentation to substantiate the fact Fifty Thousand Dollars (\$50,000.00) were spent on international marketing efforts during the previous year. Failure to provide documentation of the required expenditure shall be an event of default and will result in the GRANT being reduced by the amount of the shortage.

APPLICANT and **CITY** have agreed that at least twenty five percent (25%) of the advertising and marketing services utilized by the **APPLICANT** for the **DEVELOPMENT** shall be procured through businesses with offices located in the City of El Paso.

- (g) **ANNEXATION.** The **CITY**'s consent to enter into this Agreement is expressly contingent upon the **DEVELOPMENT** site being annexed into the City limits. Within two (2) months of the approval of this Agreement by the City Council **APPLICANT**, **CITY** and the El Paso Public Service Board shall enter into a Development Agreement to govern the development of the site in accordance with all duly enacted ordinances, rules, and regulations of the City of El Paso including, but not limited to, the Subdivision Regulations and the Public Service Board Regulations.

Within three (3) months of the approval of this Agreement by the City Council, **APPLICANT** shall submit and initiate an application for annexation of the Development Site and pay all applicable annexation and permit fees. The **CITY** shall annex the site in accordance with applicable state law and provisions regarding public notice and hearings.

- (h) **ARROYO PRESERVATION.** As additional consideration for the **CITY** entering into the Agreement, **APPLICANT** agrees that the arroyo commonly known as Arroyo 41A located on the Development site will be preserved in its natural state. The specific terms of the preservation shall be set forth in the proposed Development Agreement between the **CITY**, **APPLICANT** and Public Service Board.

- (i) **LOCAL CONTRACTORS.** *APPLICANT* and *CITY* have agreed that *APPLICANT* shall use its best efforts to insure that at least twenty-five percent (25%) of the construction of the **DEVELOPMENT** shall be procured through businesses located in the City of El Paso and employing local labor.

SECTION 4. OBLIGATIONS OF CITY.

During the Term of this Agreement and so long as an event of default has not occurred and is not 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) The *CITY* agrees to process any **GRANT** payments to *APPLICANT* within sixty (60) days after receipt of the **APPLICANT'S GRANT SUBMITTAL PACKAGE**.
- (b) For each calendar quarter during the Term of this Agreement and beginning in the second full or partial calendar quarter after the date *APPLICANT* first opens to business to the general public at the Outlet Mall, an amount equaled to 50% of the *CITY'S* one percent (1%) Sales and Use Tax revenue generated by and attributed solely to the *APPLICANT'S* sales at the **DEVELOPMENT** in the immediately prior calendar quarter and remitted from the State Comptroller to *CITY*, shall be tendered from the *CITY'S* general fund as a **GRANT** by the *CITY* to *APPLICANT* on a quarterly basis (each a "Grant Payment") to reimburse *APPLICANT* for **QUALIFIED EXPENDITURES**. The *CITY* shall obtain the Sales and Use Tax revenue information directly from the Texas Comptroller's Office pursuant to a Waiver of Sales Tax Confidentiality Form attached hereto as Exhibit "D" upon *APPLICANT'S* satisfaction of the requirements of Section 3 of this Agreement. Such Grant Payments will continue until the Total aggregate of all payments made shall reach One Million Two Hundred and Fifty Thousand and No/100 Dollars (\$1,250,000.00). Payments for any given year will not exceed Two Hundred Fifty Thousand Dollars (\$250,000.00). *APPLICANT* will be responsible for collecting sales tax payment information from the tenants of the **DEVELOPMENT**.
- (c) The *CITY* will make a one time payment to the *APPLICANT* in an amount equivalent to the PSB related infrastructure costs and fees borne by the *APPLICANT* in the construction of the **DEVELOPMENT**. This one time payment is exempt from the \$250,000.00 yearly cap but will count toward the \$1.25M total aggregate allowable for the grant.

- (d) The **CITY** agrees to assist the **APPLICANT** with its presentations to the County of El Paso as it requests economic incentives from the County. In the event the County does not provide incentives equal to or greater than those provided by the **CITY**, **APPLICANT** may at its option terminate this Agreement and the obligations of both parties shall cease.

SECTION 5. EVENTS OF DEFAULT.

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

- (a) **Failure to Maintain Development.** Failure to construct and operate the **DEVELOPMENT** on the Property for the term of this Agreement, and **APPLICANT** fails to cure such failure within thirty (30) days after written notice from the **CITY** describing such failure, or if such failure cannot be cured within such thirty (30) day period in the exercise of all due diligence, then if **APPLICANT** fails to commence such cure within such thirty (30) 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 **APPLICANT** under this Agreement or any document(s) related hereto furnished to the **CITY** by **APPLICANT** that is/are false or misleading in any material respect, either now or at the time made or furnished, and **APPLICANT** fails to cure same within thirty (30) days after written notice from the **CITY** describing the violation, or if such violation cannot be cured within such thirty (30) day period in the exercise of all due diligence, then if **APPLICANT** fails to commence such cure within such thirty (30) day period or fails to continuously thereafter diligently prosecute the cure of such violation, or if **APPLICANT** obtains actual knowledge that any such warranty, representation or statement has become false or misleading after the time that it was made, and **APPLICANT** fails to provide written notice to the **CITY** of the false or misleading nature of such warranty, representation or statement within ten (10) days after **APPLICANT** learns of its false or misleading nature.
- (c) **Insolvency.** The dissolution or termination of **APPLICANT'S** existence as a going business or concern, **APPLICANT'S** insolvency, appointment of receiver for any part of **APPLICANT'S** portion of the Property, any assignment of all or substantially all of the assets of **APPLICANT** for the benefit of creditors of **APPLICANT**, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against **APPLICANT** unless, in the case of involuntary proceedings, such proceedings are discharged within sixty (60) days after filing.

- (d) **Construction of DEVELOPMENT.** *APPLICANT'S* failure to comply with its construction obligations set forth in this Agreement and *APPLICANT* fails to cure same within thirty (30) days after written notice from the *CITY* unless such failure cannot be cured within such thirty (30) day period in the exercise of all due diligence, then if *APPLICANT* fails to commence such cure within such thirty (30) 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) **Property Taxes.** *APPLICANT* 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.
- (f) **Maintenance of Arroyo 41A.** Failure to maintain Arroyo 41A in its natural state by the *APPLICANT*.
- (g) **Other Defaults.** Failure of *APPLICANT* or *CITY* to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any related documents, or failure of *APPLICANT* or *CITY* to comply with or to perform any other term, obligation, covenant or condition contained in any other agreement between the *CITY* and *APPLICANT*, and *APPLICANT* or *CITY* fails to cure such failure within thirty (30) days after written notice from the *CITY* or *APPLICANT*, as the case may be, describing such failure, or if such failure cannot be cured within such thirty (30) day period in the exercise of all due diligence, then if *APPLICANT* or *CITY* fails to commence such cure within such thirty (30) day period or fails to continuously thereafter diligently prosecute the cure of such failure.
- (h) **Failure to Cure.** If any Event of Default by *APPLICANT* shall occur, and after *APPLICANT* fails to cure same in accordance herewith, then this Agreement is terminated 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. RECAPTURE

Should the *APPLICANT* default under Section 5(b) of this Agreement and provided that the cure period for such default has expired, the *CITY* reserves the right to recapture any and all previously awarded grants.

SECTION 7. TERMINATION OF AGREEMENT BY CITY WITHOUT DEFAULT.

CITY may terminate this Agreement without an event of default by **APPLICANT** and effective immediately if 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 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 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.** **APPLICANT** understands and agrees that the **CITY** expressly prohibits **APPLICANT** from selling, transferring, assigning or conveying in any way any rights to receive the **GRANT** proceeds without the **CITY'S** prior written consent; provided however, the **CITY'S** consent shall not be unreasonably withheld if the proposed assignee is either a wholly owned subsidiary of **APPLICANT** or is an entity with the same or better financial condition as **APPLICANT** and at least the same amount of demonstrated experience operating an outlet mall of the same type and size as the **DEVELOPMENT**.

Notwithstanding anything herein to the contrary, upon written notice from **APPLICANT** to **CITY**, no prior consent shall be required in connection with: (a) the right of **APPLICANT** to encumber the Outlet Center to secure loans, or (b) the ability of **APPLICANT** to change its corporation members as long as Horizon Group Properties, Inc. or an affiliate thereof remains a majority or equal majority member.

- (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. **APPLICANT** 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) **Completion of DEVELOPMENT.** As consideration for the agreements of the **CITY** as contained herein, **APPLICANT** agrees that it will diligently and faithfully in a good and workmanlike manner pursue the completion of the **DEVELOPMENT** and that the construction of same will be in accordance with all applicable federal, state and local laws and regulations.
- (f) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- (g) **Effective Date.** The effective date (the "Effective Date") of this Agreement shall be the date of the later to execute this Agreement by **APPLICANT** and **CITY**.
- (h) **Execution of Agreement.** City Council shall authorize the Mayor to execute this Agreement on behalf of **CITY**.
- (i) **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 **APPLICANT**. Upon any sale or other transfer of ownership rights in the Property, **APPLICANT** 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.
- (j) **Force Majeure.** It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, fire or other casualty, or court injunction, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period such party was delayed.
- (k) **Notices.** All notices required to be given under this Agreement shall be given in writing and shall be effective when actually delivered or when deposited in the United States mail, first class, postage prepaid, delivered personally, sent by a nationally recognized overnight courier, or sent by

facsimile with an original sent by United States first class mail, postage prepared on the same date 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.

In the case of the **APPLICANT**, to:

El Paso Outlet Center, LLC
C/o Horizon Group Properties, Inc.
6250 N. River Road, Suite 10400
Attention: Gary Skoien
Rosemont, Illinois 60018
Facsimile: 847-292-1879

With a copy to:

Polsky & Associates, Ltd.
205 North Michigan Avenue
41st Floor
Chicago, Illinois 60601
Attention: Sam Polsky
Facsimile: 312-540-0200

In the case of the **CITY**, to:

City of El Paso
Office of the Mayor
2 Civic Center Plaza
El Paso, Texas 79901-1196
Attention: City Manager

Or such other address(es) with respect to either party as that party may, from time to time, designate in writing and forward to the other as provided in this paragraph.

- (l) **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 **DEVELOPMENT** unless specifically enumerated herein.

- (m) **Severability.** In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.
- (n) **Sovereign Immunity.** No party hereto waives any statutory or common law right to sovereign immunity by virtue of its execution hereof.
- (o) **Event of Casualty.** In the event of total destruction or damage to the contemplated **DEVELOPMENT** by fire or other casualty, during construction or thereafter so long as the **GRANT** has not been fully paid, the **APPLICANT** shall determine and advise the **CITY** in writing within one year of such destruction or damage whether to restore, reconstruct and repair any such destruction or damage so that the contemplated **DEVELOPMENT** will be completed or rebuilt in accordance with this Agreement. During any period of restoration, reconstruction or repair, if no sales and use taxes for sales on the Property are being collected, the Term of this Agreement shall be automatically extended for a period equal to the period of interruption of operations on the Property due to such damage or destruction. Should the **APPLICANT** determine not to restore, reconstruct and repair such damage or destruction, the **GRANT** shall immediately terminate.
- (p) **Headings.** The Section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
- (q) **Confidential Information.** The **CITY** acknowledges and agrees that the sales tax information to be provided by the owners and lessees hereunder is proprietary and valuable information and that any disclosure or unauthorized use thereof will cause irreparable harm to the owners and lessees, and to the extent permitted by state or federal law, the **CITY** agrees to hold in confidence all sales figures and other information provided by the State of Texas, or any owner or lessee of a portion of the Property, or obtained from any such owner's or lessee's records in connection with this Agreement, and in connection therewith, the **CITY** shall not copy any such information except as necessary for dissemination to the **CITY'S** agents or employees as permitted hereinafter. The **CITY** shall be permitted to disclose such information (i) to its agents or employees who are reasonably deemed by the **CITY** to have a need to know such information for purposes of this Agreement; provided, that such agents and employees shall hold in confidence such information to the extent required of the **CITY** hereunder or (ii) to the extent required by order of court or by state or federal law. The confidentiality requirements

of this Agreement shall survive any expiration, termination or cancellation of this Agreement and shall continue to bind the **CITY**, its successors, assigns and legal representatives for a period of five (5) years from the termination, expiration or cancellation of this Agreement.

SECTION NINE. REPRESENTATION OF THE PARTIES

(a) Representations of the CITY.

- (1) The **CITY** hereby represents and warrants that it has full constitutional and lawful right, power and authority, under current applicable law, to execute and deliver and perform the terms and obligations of this Agreement and the foregoing have been or will be, upon adoption of ordinances authorizing the execution of this Agreement, duly and validly authorized and approved by all necessary **CITY** proceedings, findings and actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of the **CITY**, enforceable in accordance with its terms.
- (2) The **CITY** hereby represent and warrants that it the full power and authority to obtain the sales tax information necessary to determine the amount of quarterly sales tax revenue generated by the **DEVELOPMENT**.

- (b) **Representations of the APPLICANT.** The **APPLICANT** hereby represents and warrants it has full power to execute and deliver and perform the terms and obligations of this **AGREEMENT** and all of the foregoing has been duly and validly authorized by all necessary corporate proceedings. This **AGREEMENT** constitutes the legal, valid and binding obligation of the **APPLICANT**, enforceable in accordance with its terms.

CITY:

CITY OF EL PASO, TEXAS

By: _____

Joyce A. Wilson
City Manager

APPROVED AS TO FORM:



Sylvia Borunda Firth
Assistant City Attorney

APPROVED AS TO CONTENT:



Lucile A. Ponticelli
Economic Development Manager

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on the ____ day of _____, 2006, 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

My Commission Expires:

EXHIBIT "A"
[Legal Description]

EXHIBIT "A-1"

Description of Development

An approximately 60 acre retail outlet shopping center comprised of approximately 380,000 square feet of retail space.

EXHIBIT "B"

Grant Submittal Package Form

EL PASO OUTLET CENTER, LLC believes that it has substantially met its obligations under the Chapter 380 Agreement dated _____ and signed by _____. Pursuant to the agreement, EL PASO OUTLET CENTER, LLC submits this Grant Submittal Package Form in compliance with said Agreement and in anticipation of receiving the grant in consideration for its obligations met under the Agreement.

As required by the Agreement, the following information is submitted.

1. Documentation to evidence the amount of sales taxes paid as a result of the retail operations of the Outlet Center and accompanying Waiver of Sales Tax Confidentiality Forms;
2. Property Tax Payment Receipt(s) of payment for Tax year _____.

It is understood by EL PASO OUTLET CENTER, LLC that the City of El Paso has up to 60 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.

Signature: _____

EXHIBIT D

Waiver of Sales Tax Confidentiality

Date _____

I authorize the 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 our retail store located in the _____ Outlets located 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: _____