

AK
2/8/2010

STATE OF TEXAS)
)
COUNTY OF EL PASO) **CHAPTER 380 ECONOMIC DEVELOPMENT
PROGRAM AGREEMENT**

This Chapter 380 Economic Development Program Agreement ("Agreement") is made and entered into by and between the **CITY OF EL PASO, TEXAS ("CITY")**, a Texas home rule municipal corporation, and **HAWKINS REGENCY, LLC ("APPLICANT")**, a Delaware limited liability company, doing business in the State of Texas, 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 ("Chapter 380"); and

WHEREAS, the **CITY** desires to provide, pursuant to Chapter 380, an incentive to **APPLICANT** to remove the current blighted condition of that certain real property being more particularly described in **Exhibit "A"** (the "Property") for the purpose of redeveloping the Property in the manner more fully described in this Agreement, that will serve as an economic stimulus in the City of El Paso; 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 **APPLICANT** will serve the public purpose of promoting local economic development and enhancing business and commercial activity within the City of El Paso; and

WHEREAS, the **CITY** and **APPLICANT** desire the removal of the blighted conditions on the Property and that better, more productive use be made of that Property; and

WHEREAS, the removal of the blighted conditions and redevelopment of the Property in the manner more fully described in this Agreement will encourage increased economic development in the **CITY**, provide significant increases in the **CITY'S** property and sales and use 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 **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. 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) **Applicant.** The word "**APPLICANT**" means Hawkins Regency, L.L.C., a Delaware limited liability company, operating and doing business in the State of Texas.
- (c) **Base Property Tax Valuation.** The words "Base Property Tax Valuation" mean the valuation of the Property by the El Paso Central Appraisal District as of January 1, 2008.
- (d) **City.** The word "**CITY**" means the City of El Paso, Texas.
- (e) **Development.** The word "**DEVELOPMENT**" means the entirety of **APPLICANT'S** proposed retail lifestyle designed development upon the Property, inclusive of the **LIFESTYLE COMPONENT**, and with identifiable lifestyle amenities distributed throughout the **DEVELOPMENT** in a manner consistent with the approved detailed site development plan depicted in **Exhibit "B-1"**.
- (f) **Grant.** The word "**GRANT**" means payments to **APPLICANT** under the terms of this Agreement computed with reference to (i) sales and use taxes generated by Qualified Sales in the **DEVELOPMENT**, remitted from the State Comptroller to the **CITY**, and payable from the **CITY'S** general revenue fund, and (ii) a yearly 100% rebate of the ad valorem real property tax increment generated from the Property based upon the increased value of the Property over the value of the Base Property Tax Valuation, as determined by the El Paso Central Appraisal District and collected by the **CITY** for the term of this Agreement.
- (g) **Grant Submittal Package.** The words "Grant Submittal Package" mean the documentation required to be supplied to the **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.
- (h) **Lifestyle Component.** The words "**LIFESTYLE COMPONENT**" mean an area intended to encourage a collection of premier national retailers, select local merchants and specialty restaurants looking to locate in a unique "Main Street" pedestrian shopping environment. If constructed by **APPLICANT** it shall have an open-air configuration and include a minimum area of 50,000 square feet and unique to the **LIFESTYLE COMPONENT**, all buildings will be architecturally

finished on all four sides and will have vertical and horizontal articulations. Distinctive architecture will also include beautifully appointed design features along building projections and recesses, outdoor pedestrian plaza(s) and the opportunity for alfresco dining overlooking unique water features, lushly landscaped walking areas, special ground architecture elements and a common gathering area. Other elements help make the **LIFESTYLE COMPONENT** serve as a multi-purpose, leisure-time destination, including but not limited to: restaurants and design ambience and amenities such as fountains and street furniture that are conducive to casual browsing, complimentary and coordinating enhanced landscape, outdoor music system, planter pots with internal irrigation, directory signs, angled parking and unique tenant designed storefronts.

- (i) **Net Present Value (NPV).** The words "Net Present Value" mean the present value of the periodic Grant payments paid over the term of this Agreement discounted at a 9% rate calculated as of the date of the first **GRANT** payment or any prior partial payment.
- (j) **Property.** The word "Property" means approximately fifty-five (55) acres of real property located at 8889 Gateway West Boulevard, El Paso, Texas, more fully described in **Exhibit "A"** attached hereto and incorporated herein by reference.
- (k) **Qualified Expenditures.** The words "Qualified Expenditures" mean those reimbursable costs incurred by **APPLICANT** in the Site Preparation Work that the **CITY** has determined is necessary to render the Property to standard developable site condition, said costs being more specifically described in **Exhibit "D."**
- (l) **Qualified Sales.** The words "Qualified Sales" mean all Sales and Use Tax revenue generated by and attributed to establishments located in the **DEVELOPMENT** and exclusive of any sales and uses taxes generated from Relocations in the **DEVELOPMENT**.
- (m) **Relocation(s).** The word "Relocation(s)" means:

Any restaurant or retailer that as of the ~~Effective Date of this Agreement~~ (i) has existing operations situated within the geographical area crosshatched on the attached **Exhibit "G"** (the "Restricted Area"); (ii) at any time following the ~~Effective Date~~ relocates from the Restricted Area to a locale in the **DEVELOPMENT**; and (iii) during the term of this Agreement ceases to operate the restaurant or retail facility within the Restricted Area. Where restaurants and retailers with existing operations situated within the Restricted Area as of the ~~Effective Date of this Agreement~~ expand their operations by opening additional restaurants or retail facilities in the **DEVELOPMENT**, those additional restaurants or retail facilities will not be considered as Relocations, provided the restaurants and retail facilities with existing operations situated within the Restricted Area as

Relocation

Relocation Date

Relocation

Relocation

(n) Relocation Date. The Relocation Date means the date on which Applicant commences construction of the Lifestyle Component.

of the Effective Date of this Agreement remain open for business to the general public for the term of this Agreement.

(o)

Site Preparation Work. The words "Site Preparation Work" mean demolition and removal (except for certain materials that **APPLICANT** plans to reuse at the site) from the Property of (i) the buildings presently situated on the Property, and (ii) all related improvements that the **CITY** has reasonably determined are necessary to render the Property to a standard developable site condition consistent with current City standards, including but not limited to rough grading, asphalt, concrete, retaining walls, utilities, etc.

Specifically with respect to the Farah Building, Applicant will commence demolition of the Farah Building no later than August 10, 2010.

SECTION 2. TERM.

Except as otherwise provided herein, the term of this Agreement shall commence on the Effective Date (as such term is defined in Section 9(g) below) and shall terminate on the first to occur of: (i) the date when the **GRANT** amount is fully paid; (ii) subject to the provisions of Section 3(d) below, ten (10) years from the commencement of the Grant Period (as such term is defined in Section 9(k) below), plus such additional time thereafter as may be necessary to process the final annual **GRANT** payment pursuant to the procedures described in Sections 3 and 4 below; or (iii) the proper termination of this Agreement in accordance with the applicable provisions contained herein. Notwithstanding anything to the contrary in this Agreement, the **CITY** acknowledges that its obligations under this Agreement, subject to the terms and conditions hereof, to make **GRANT** payments to **APPLICANT** shall continue until the first of the events described in subparagraphs (i) through (iii) above occurs.

SECTION 3. OBLIGATIONS OF APPLICANT.

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

- (a) **DEVELOPMENT.** Subject to the terms and conditions set forth in this Agreement, **APPLICANT** agrees to perform the Site Preparation Work and to redevelop and construct, at its sole cost and expense, or the expense of its lessees or users, the **LIFESTYLE COMPONENT** with a minimum area of the greater of: (i) 50,000 square feet, or (ii) ten percent (10%) of the total square footage of the **DEVELOPMENT** or any portion thereof to the extent that **APPLICANT** elects to redevelop and construct the entire **DEVELOPMENT** or any portion thereof. If **APPLICANT** so elects to construct the entire **DEVELOPMENT** or any portion thereof, identifiable lifestyle amenities will be distributed throughout, as depicted in **APPLICANT'S** detailed site development plan in **Exhibit "B-1"** and listed in **Exhibit "B"**.

The **CITY** acknowledges, however, that except as expressly provided in this Agreement with respect to **APPLICANT'S** performance of the Site Preparation Work, **APPLICANT** shall have no obligation under this Agreement to construct any improvements on the Property or otherwise to redevelop the Property in any manner. Notwithstanding anything to contrary in this Agreement, **APPLICANT** acknowledges and agrees that, although it is not required hereunder to construct the entire **DEVELOPMENT** or any portion thereof, its construction of the **DEVELOPMENT** or any portion thereof in addition to completion of the **LIFESTYLE COMPONENT** shall be a condition precedent to its receipt of any **GRANT** payments under this Agreement.

The detailed site development plan in **Exhibit "B-1"** shall show the following: the boundaries of the tract proposed for development; elevations or perspective of the building(s); location and arrangement, use, dimensions, square footage and height of all structures; sidewalks and curb cuts; driveways; on-site parking space, to include loading and unloading berths; open spaces; landscape and location of exterior signs; screening walls; and screening of on-site parking facilities.

Minor modifications to the detailed site development plan may be requested in writing by the **APPLICANT** and approved in writing by the City Manager or designee if any of the following apply: (i) minor modifications are in substantial conformity (herein defined below) to the detailed site development; (ii) the minor modifications represent an improvement in the detailed site development plan; or (iii) the minor modification is required by a governmental entity. Changes other than minor modifications shall require approval by City Council. The plan shall be determined to be in "substantial conformity" with the detailed site development plan if it does not significantly alter the arrangement of land use, and does not increase the density or relocate major circulation elements or decrease the landscaped area or open space or materially alter the plan or concept for the planned development.

Ninety-Six (96)

Subject to force majeure delays (as addressed in Section 9(j) below), **APPLICANT** shall (i) commence the Site Preparation Work within twelve (12) months after the Effective Date, and (ii) substantially complete the Site Preparation Work within ~~thirty-six (36)~~ months following the Effective Date. In addition, in order for **APPLICANT** to qualify for **GRANT** payments under this Agreement, if **APPLICANT** determines in its sole discretion to construct the **DEVELOPMENT** or portion thereof including the **LIFESTYLE COMPONENT**, **APPLICANT** shall (iii) commence construction of the **LIFESTYLE COMPONENT** within ~~thirty-six (36)~~ months following the Effective Date; and (iv) substantially complete construction of the **LIFESTYLE COMPONENT** within ~~sixty (60)~~ months following the Effective Date. For the purposes of this Agreement, references to "substantial completion," "substantially complete" and similar terms (a) with

Ninety-Six (96)

One hundred twenty (120)

respect to the Site Preparation Work, shall mean that **APPLICANT** has completed the demolition of the existing buildings situated on the Property as of the Effective Date, the demolition of the foundations of such buildings, the removal from the Property of demolished materials (except for those materials that **APPLICANT** plans to reuse at the site), and the preparation of the surface of the Property to a rough-grade standard; and (b) with respect to the **LIFESTYLE COMPONENT**, shall mean that the stage and progress of the improvements is sufficiently complete (except for completion of leasehold improvements, including without limitation punch list items) so that **APPLICANT** and/or lessees or users can occupy or utilize such improvements for their intended use, provided that **APPLICANT** and/or any lessee or user has received a temporary or final Certificate of Occupancy issued with respect to such improvements.

APPLICANT agrees that it shall make Qualified Expenditures of not less than Twelve Million Dollars (\$12,000,000.00); provided, however, that if **APPLICANT** fails to make Qualified Expenditures of at least Twelve Million Dollars (\$12,000,000.00) on the Property, **APPLICANT** shall not be deemed to be in default under this Agreement, but the amount of the **GRANT** shall be reduced proportionately based on the amount by which the Qualified Expenditures are less than Twelve Million Dollars (\$12,000,000.00). **APPLICANT** shall submit to the **CITY** such documentation as may be reasonably necessary to verify the expenditure of Qualified Expenditures for the Site Preparation Work, as specifically described in **Exhibit "D."**

(b) **AMOUNT OF GRANT.** The total **GRANT** amount payable by the **CITY** under this Agreement, if any, shall be the aggregate of all payments made that results in a maximum Net Present Value of Eight Million Dollars (~~\$8,000,000.00~~).

(c) **DISBURSEMENT OF GRANT.** No later than ~~sixty (60)~~ one hundred twenty (120) months following the Effective Date, **APPLICANT** shall submit to the **CITY** an initial Grant Submittal Package as specified in Section 3(d) below. Thereafter, beginning as of the commencement of the Grant Period, the **APPLICANT** shall be entitled to receive a yearly **GRANT** disbursement equal to 100% of the **CITY'S** one percent (1%) Sales and Use Tax revenue generated by and attributable solely to the Qualified Sales at the **DEVELOPMENT**, which have been remitted from the State Comptroller to the **CITY**.

In addition, during the term of this Agreement beginning as of the commencement of the Grant Period, **APPLICANT** will be eligible to receive on a yearly basis an amount equal to 100% of the ad valorem real property tax revenue increment based upon the increased value of the Property over the Base Property Tax Valuation, which is attributable solely to the Property's increase in property tax value as determined by the El Paso Central Appraisal District and collected by the **CITY** in each fiscal year.

Eligibility for any **GRANT** payment is expressly contingent upon **APPLICANT'S** satisfaction of the requirements of Section 3 of this Agreement.

GRANT payments will continue until the earlier of the expiration of the term of this Agreement or until the aggregate of all payments made results in a Net Present Value of EIGHT MILLION DOLLARS (\$8,000,000.00). Under no circumstances shall the **CITY** be required to disburse under this Agreement more than an aggregate of all payments made that would exceed the Net Present Value of EIGHT MILLION DOLLARS (\$8,000,000.00), nor shall **APPLICANT** be entitled to receive the **GRANT** unless it satisfies all the requirements of Section 3 of this Agreement.

(d) **GRANT SUBMITTAL PACKAGE.**

Unless otherwise agreed by the **CITY** and **APPLICANT** in writing, **APPLICANT** shall annually submit one Grant Submittal Package in the form attached hereto as **Exhibit "C"** together with the requisite documentation. The Grant Submittal Package must be submitted each year following the commencement of the Grant Period and no later than July 1 of each year.

Prior to the submittal of the first Grant Submittal Package **APPLICANT** may at its election, submit to the **CITY** documentation as may be reasonably necessary to verify the expenditure of Qualified Expenditures for the Site Preparation Work, (i.e., invoices marked "paid" to third parties and not reimbursed from any other source or other similar verifiable documentation, as reasonably required by the **CITY**).

If the period between the commencement of the Grant Period and the next-following July 1 is less than a full calendar year, then the **GRANT** payment corresponding to the Grant Submittal Package pertaining to such period (the "partial payment") shall not count as the first annual **GRANT** payment under this Agreement, and **APPLICANT** shall be entitled thereafter to ten (10) full annual payments.

If **APPLICANT** shall fail to timely submit a Grant Submittal Package for any particular year, then the **CITY** shall give **APPLICANT** written notice of **APPLICANT'S** failure to timely submit such Grant Submittal Package, and **APPLICANT** shall have ninety (90) 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 so long as such determination is made in accordance with the terms and conditions of this Agreement; provided, however **APPLICANT** may appeal to the City Council within thirty (30) days of payment, in which event 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 so long as such determination is made in accordance with the terms and conditions of this

Agreement. Nothing herein shall limit (or be construed to limit) **APPLICANT'S** rights and remedies as described in Sections 5 through 9 of this Agreement.

APPLICANT shall be responsible for collecting Waivers of Confidentiality forms, attached hereto as **Exhibit "E"** from the lessees and users of the **DEVELOPMENT**. **CITY** will use the information provided by the State Comptroller and submitted by **APPLICANT** in determining the amount of **GRANT** disbursement that **APPLICANT** is eligible to receive. The **CITY** will verify all such information, but the **CITY** shall not have an obligation to request Waivers of Confidentiality from lessees or users in the **DEVELOPMENT** or otherwise collect sales tax information.

- (e) **PAYMENT OF TAXES.** **APPLICANT** shall pay by January 31 of each year all of its ad valorem taxes due for the previous tax year on the **DEVELOPMENT** and the Property described in **Exhibit "A"**. **APPLICANT** shall have the right to contest the appraised value of the Property as provided by law, subject to the provisions of paragraph (f) below.
- (f) **PROPERTY VALUE.** **APPLICANT** 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 El Paso Central Appraisal District at \$100.00 or lower per square foot after substantial completion of all improvements. It is the intent of the parties that the assessed value of the real property on the tax rolls, after substantial completion of improvements, have a minimum value of \$100.00 per square foot during the term of this Agreement and any affirmative act by **APPLICANT** to reduce the assessed value to an amount lower than \$100.00 per square foot will be an event of default that will result in the termination of this Agreement; notwithstanding the foregoing, however, the **CITY** acknowledges and agrees that if at any time during the term of this Agreement the taxable value of the Property, after substantial completion of improvements, has a base value of less than \$100.00 per square foot, **APPLICANT** shall not in any event be deemed to be in default hereunder unless **APPLICANT** breaches its express covenants set forth herein with respect to challenging, or taking any affirmative act to reduce, the assessed value.
- (g) **LOCAL CONTRACTORS/LABOR.** **APPLICANT** and **CITY** have agreed that **APPLICANT** shall use commercially reasonable efforts to ensure that at least twenty-five percent (25%) of the Site Preparation Work and of the construction work associated with the **DEVELOPMENT** shall be procured through businesses and/or employing local labor (including subcontractors and suppliers) located in the City of El Paso.
- (h) **TRAFFIC IMPACT ANALYSIS.** **APPLICANT** acknowledges that the **DEVELOPMENT** is expected to generate traffic in excess of 500 adjusted average daily trips for a commercial use and agrees that prior to commencing construction of the **DEVELOPMENT**, to include the issuance of grading or

building permits, and even if not otherwise required to do so by law, **APPLICANT** shall conduct and submit to the City Traffic Engineer a Traffic Impact Analysis ("TIA") that meets the standards set forth in Chapter 19, Article 2, Section 19.18 of the El Paso City Code and the City of El Paso approved guidelines. The City Manager or designee shall evaluate the TIA and make recommendations thereon; and **APPLICANT** will implement any measures that the City Manager or designee determines are necessary to mitigate any adverse traffic impacts attributable to the **DEVELOPMENT** on the surrounding public infrastructure; such measures shall be considered Qualified Expenditures under this Agreement. Notwithstanding the foregoing, in no event shall **APPLICANT** be required to incur any cost or expense in connection with such mitigation measures in excess of \$600,000.00 in the aggregate.

- (i) **RELOCATION PENALTY.** In order to mitigate the potential loss of property tax revenue to the **CITY** from relocation of existing retail facilities and to discourage **APPLICANT** from attempting to recruit **ANCHOR TENANTS** currently located in **MAJOR SHOPPING CENTERS** within the Restricted Area specified in the attached **Exhibit "G"**, the parties agree as follows:

During the term of this Agreement, if any Anchor Relocation occurs, then **APPLICANT** shall be assessed a penalty equal to the dollar amount of the real property tax assessed against the portion of the real estate upon which the **ANCHOR TENANT** was previously located for the calendar year prior to such Anchor Relocation; provided, that in the event the space occupied by such **ANCHOR TENANT** was not separately assessed for such calendar year, then the dollar amount of the real property tax assessed against the portion of the real estate upon which the **ANCHOR TENANT** was previously located for the calendar year prior to such Anchor Relocation shall be deemed to be equal to such **ANCHOR TENANT'S** Tax Share. The penalty shall be assessed (on a prorated monthly basis) as of the date such Anchor Relocation occurs until such time the space vacated by the **ANCHOR TENANT** is at least 90% occupied by a new user. The annual **GRANT** payments under this Agreement shall be reduced by the amount of any penalties assessed under this Section 3(i), resulting in the maximum **GRANT** amount of \$8 million NPV being reduced by the corresponding amount of any such penalties.

For purposes of this Section 3(i) the words "**ANCHOR TENANT**" mean a retail establishment occupying 30,000 square feet or more of space in a **MAJOR SHOPPING CENTER**; (ii) the words "**MAJOR SHOPPING CENTER**" mean a shopping center of 500,000 square feet or greater, situated within the Restricted Area specified in the attached **Exhibit "G"**; (iii) the words "Anchor Relocation" mean and refer to any **ANCHOR TENANT** that (A) as of the Effective Date of this Agreement has existing operations in a **MAJOR SHOPPING CENTER**, (B) at any time following the Effective Date relocates from such **MAJOR SHOPPING CENTER** to a locale in the **DEVELOPMENT**, and (C) during the term of this Agreement ceases to operate at its space in such **MAJOR SHOPPING**

CENTER; and (iv) the words "Tax Share" mean the amount determined by multiplying the total real property taxes assessed against the **MAJOR SHOPPING CENTER** in which the **ANCHOR TENANT** was previously located for the calendar year prior to the Relocation multiplied by a fraction, the numerator of which is the number of square feet contained in the space occupied by the **ANCHOR TENANT** and the denominator of which is the total number of square feet contained in all improvements situated at such **MAJOR SHOPPING CENTER**.

- (j) **CONDITIONS PRECEDENT.** As a condition to **APPLICANT'S** obligations under this Agreement, including without limitation its obligations relating to the **DEVELOPMENT** as set forth in this Section 3, **APPLICANT** shall first have (i) acquired fee title to all of the Property; and (ii) obtained from the **CITY** and state all permits, approvals and entitlements necessary for the performance of the Site Preparation Work and for the construction of the **DEVELOPMENT**.

SECTION 4. OBLIGATIONS OF CITY.

During the term of this Agreement and so long as an event of default by **APPLICANT** has not occurred and is not continuing as set forth in Section 5 of this Agreement (provided, however, an event of default by **APPLICANT** 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 ninety (90) days after receipt of the **APPLICANT'S** Grant Submittal Package. If, pursuant to Section 3(d) above, **APPLICANT** elects, prior to the submittal of the first Grant Submittal Package to submit to the **CITY** documentation as may be reasonably necessary to verify the expenditure of Qualified Expenditures for the Site Preparation Work, then, the **CITY**, upon receipt of such documentation, shall review and report to **APPLICANT** within ninety (90) calendar days in writing which expenditures have been verified as Qualified Expenditures under this Agreement.
- (b) During the term of this Agreement and beginning as of the commencement of the Grant Period, an amount equaled to 100% of the **CITY'S** one percent (1%) Sales and Use Tax revenue generated by and attributable solely to the Qualified Sales 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 yearly basis upon **APPLICANT'S** satisfaction of the requirements of Section 3 of this Agreement. The **CITY** shall obtain the Sales and Use Tax revenue information directly from the Texas Comptroller's Office based on the Waiver of Sales Tax Confidentiality Forms attached hereto as **Exhibit "E"** provided by **APPLICANT** and upon **APPLICANT'S** satisfaction of the requirements of Section 3 of this

Agreement. The **CITY** acknowledges that the sales tax payment information collected by **APPLICANT** pursuant to Section 3(d) above and reported to the **CITY** shall be based upon reports filed by the lessees/users of the **DEVELOPMENT** with the State Comptroller's Office

In addition, during the term of this Agreement beginning as of the commencement of the Grant Period, **APPLICANT** will be eligible to receive on a yearly basis an amount equal to 100% of the ad valorem real property tax revenue increment based upon the increased value of the Property over the Base Property Tax Valuation, which is attributable solely to the Property's increase in property tax value as determined by the El Paso Central Appraisal District and collected by the **CITY** in each fiscal year.

Such **GRANT** Payments will continue until the earlier of the expiration of the term of this Agreement or until the aggregate of all payments made results in no greater than a Net Present Value of EIGHT MILLION DOLLARS (\$8,000,000.00).

- (c) It is expressly understood by the **APPLICANT** and the **CITY** that **GRANT** payments made pursuant to this Agreement are conditioned upon: (i) **APPLICANT'S** construction of the **DEVELOPMENT** or portion thereof including the **LIFESTYLE COMPONENT** in accordance with the terms and conditions set forth in this Agreement; and (ii) the **CITY'S** receipt of sales taxes revenues in sufficient amount of such **GRANT** payment from the State Comptroller and from annual appropriations of such funds of the **CITY** as may be legally set aside by the **CITY** for the implementation of economic development or financing programs authorized by Chapter 380 of the Texas Local Government Code, Section 52-a, Article III of the Texas Constitution, or other statutory authority or the home-rule powers of the **CITY** under applicable Texas law. In no event shall any **GRANT** payment exceed the amounts as are actually received in hand by the **CITY** from the ad valorem property and sales and use tax revenues from the Property and the **DEVELOPMENT**.
- (d) The **CITY** agrees to assist **APPLICANT** with its presentations to the County as it requests economic incentives from such authority. In the event the County does not provide sales tax and ad valorem tax incentives similar in structure to those provided by the **CITY** and in an amount that **APPLICANT** deems adequate in its sole and exclusive discretion **APPLICANT** may at its option terminate this Agreement and the obligations of both parties shall cease.

SECTION 5. TERMINATION AND RECAPTURE.

Subject to the force majeure provisions set forth in Section 9(j) below, each of the following shall constitute an event that may result in the termination of the Agreement by the **CITY** and a recapture of **GRANT** proceeds:

- (a) **Failure to Commence.** In the event **APPLICANT** fails to commence the Site Preparation Work or the construction of the **LIFESTYLE COMPONENT** within the time periods specified in the applicable provisions of Section 3 of this Agreement, the same shall not constitute an event of default under this Agreement; however, the **CITY** shall have the right, as its sole and exclusive remedy to terminate this Agreement by written notice thereof to **APPLICANT**, whereupon the obligations of both parties shall cease, and to recapture from **APPLICANT** any and all previously awarded grant payments pursuant to the provisions of Section 7 below.
- (b) **Failure to Substantially Complete.** In the event **APPLICANT** fails to substantially complete the Site Preparation Work or the **LIFESTYLE COMPONENT** within the time periods specified in the applicable provisions of Section 3, **CITY** shall provide **APPLICANT** thirty (30) days prior written notice of such failure, and if **APPLICANT** fails or refuses to cure within said thirty (30) day time period, the same shall not constitute an event of default under this Agreement; however, the **CITY** shall have the right, as its sole and exclusive remedies in connection therewith, to terminate this Agreement by written notice thereof to **APPLICANT**, whereupon the obligations of both parties shall cease, and to recapture from **APPLICANT** any and all previously awarded grant payments pursuant to the provisions of Section 7 below.

SECTION 6 EVENTS OF DEFAULT.

Subject to the force majeure provisions set forth in Section 9(j) below, the following acts or omissions shall constitute an Event of Default and, in the case of an Event of Default and may result in a termination of the Agreement, and in the case of Section 6(a) below, may result in a recapture of all grant payments made during the term of this Agreement.

- (a) **False Statements.** In the event **APPLICANT** provides any written warranty, representation or statement under this Agreement (or in any document(s) related hereto to the extent the same is/are generated by **APPLICANT** and delivered by **APPLICANT** to the **CITY** following the Effective Date), that is/are false or misleading in any material respect, either as of the Effective Date or at the time made or furnished, and **APPLICANT** fails to cure same within thirty (30) days after written notice from the **CITY** describing the violation shall be deemed an event of default. If such violation cannot be cured within such thirty (30) day period in the exercise of all due diligence, and **APPLICANT** fails to commence such cure within such thirty (30) day period or fails to continuously thereafter diligently prosecute the cure of such violation, such actions or omissions shall also be deemed an event of default. Further, if **APPLICANT** obtains actual knowledge that any previously provided warranty, representation or statement has become false or misleading after the time that it was made, and **APPLICANT** fails to provide written notice to the **CITY** of the false or misleading nature of such warranty, representation or statement within ten (10) days after **APPLICANT**

learns of its false or misleading nature, such action or omission shall be deemed an event of default. In the event this Agreement is terminated pursuant to this Section, all **GRANT** payments previously provided by the **CITY** pursuant to this Agreement shall be recaptured and repaid by **APPLICANT** within sixty (60) days from the date of such termination. Notwithstanding anything seemingly to the contrary in this Agreement, the **CITY** acknowledges and agrees that, for the purposes of this Section 6(a), no person or entity other than **APPLICANT** is authorized to make any warranty, representation or statement, written or otherwise, for or on behalf of **APPLICANT**, and any such warranty, representation or statement, written or otherwise, purportedly made for or on behalf of **APPLICANT**, shall in no event be deemed a breach of this Section 6(a).

- (b) **Insolvency.** The dissolution or termination of **APPLICANT'S** existence as a going business or concern, **APPLICANT'S** insolvency, appointment of receiver for any part of **APPLICANT'S** portion of the Property, any assignment of all or substantially all of the assets of **APPLICANT** for the benefit of creditors of **APPLICANT**, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against **APPLICANT** shall all be deemed events of default. However, in the case of involuntary proceedings, if such proceedings are discharged within sixty (60) days after filing, no event of default shall be deemed to have occurred.
- (c) **Failure to Maintain LIFESTYLE COMPONENT AND DEVELOPMENT.** **APPLICANT'S** failure or refusal to maintain the **LIFESTYLE COMPONENT** and the **DEVELOPMENT** (if **APPLICANT** so elects to construct the entire **DEVELOPMENT** or portion thereof) as provided in Section 9(u) below and **APPLICANT'S** failure or refusal to cure within thirty (30) days after written notice from the **CITY** describing such failure, shall be deemed an event of default. However, if such failure cannot be cured within such thirty (30) day period in the exercise of all due diligence, but the **APPLICANT** has not yet commenced such cure within such thirty (30) day period or fails to continuously thereafter diligently prosecute the cure of such failure, such actions or omissions shall also be deemed an event of default.
- (d) **Property Taxes.** In the event **APPLICANT** allows any property taxes owed by **APPLICANT** 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. Notwithstanding the foregoing, **APPLICANT** shall have the right to contest the appraised value of the Property as provided by law, subject to the provisions of Section 3(f) above.
- (e) **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, and **APPLICANT** 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 **APPLICANT** 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.

- (f) **Failure to Cure.** Except as otherwise expressly provided in this Agreement, if any event of default by **APPLICANT** shall occur, and after **APPLICANT** fails to cure same in accordance herewith, then the **CITY** may at its option and as its sole and exclusive remedy terminate this Agreement by written notice thereof to **APPLICANT** and the obligations of both parties shall cease. Notwithstanding the foregoing, (i) if an Event of Default by **APPLICANT** occurs under Section 6(a) above, the **CITY'S** sole and exclusive remedies are (A) to terminate this Agreement by written notice thereof to **APPLICANT**, whereupon the obligations of both parties shall cease, and (B) to bring a suit to enforce **APPLICANT'S** recapture obligations under Section 7; and (ii) though not an event of default hereunder, the **CITY** also shall have the right to bring a suit to enforce its recapture rights under Sections 5(a), 5(b) and 7.

In addition, if any Event of Default by the **CITY** shall occur, and the **CITY** fails to cure same within thirty (30) days of receipt of written notice of default, then **APPLICANT** shall have the right to bring a suit for specific performance, subject to the provisions of the following sentences. The **CITY** has waived immunity from suit for specific performance of the payment of the Grant award (including the processing by the **CITY** of **GRANT** payments as required by Section 4 above), and the issuance of estoppel certificates in accordance with the terms of this Agreement only. The waiver is limited to specific performance only and the parties agree that the **CITY** has not consented to waiver of suit for any other purposes or any causes of action seeking legal or equitable relief including, but not limited to: interest, consequential damages, exemplary damages, court costs or attorney's fees.

SECTION 7. RECAPTURE.

Should the **APPLICANT** default under Section 6(a) of this Agreement or fail to substantially complete the Site Preparation Work or the **LIFESTYLE COMPONENT** in accordance with Section 5 of this Agreement and provided that any applicable cure period, shall have expired, the **CITY** reserves the right to recapture any and all previously awarded grant payments.

SECTION 8. TERMINATION OF AGREEMENT BY CITY WITHOUT DEFAULT OF APPLICANT.

The **CITY** may terminate this Agreement for its convenience and without the requirement of an event of default by **APPLICANT** 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, which termination shall become effective immediately; provided, that the **CITY** shall provide **APPLICANT** prompt written notice of any such termination.

SECTION 9. 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, and supersedes all prior agreements, communications and understandings, if any, relating to the matters described herein. 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/Transfer.** The parties agree that nothing in this Agreement shall limit **APPLICANT'S** ability, at any time throughout the term of this Agreement, to sell, transfer or convey the Property or any portion thereof; provided however, the **CITY** retains the right to approve transfers of this Agreement or terminate it as set forth below:
 - (1) **Substantial Completion.** For purposes of this Section 9(c) relating to assignability only, the **DEVELOPMENT** shall be deemed to be "substantially complete" upon the date that construction of Phase I, with a minimum square footage of 250,000 square feet of leasable area located within the crosshatched area labeled as "Phase I" on the attached **Exhibit "B-1"**, has reached the point that the stage and progress of the improvements are sufficiently complete (except for completion of leasehold improvements, including without limitation punch list items) so that **APPLICANT** and/or lessees or users can occupy or utilize such improvements for their intended use, provided that **APPLICANT** and/or any lessee or user has received a temporary or final Certificate of Occupancy issued with respect to such improvements.

- (2) **Pad Sales.** *APPLICANT* shall have the ability, at any time throughout the term of this Agreement, to sell, transfer or convey pad sites to third-party users. Pad sites are defined as parcels each comprising two acres or less of the entirety of the Property. In the event of any such sale, transfer or conveyance, *APPLICANT* is expressly prohibited from transferring, assigning, or conveying this Agreement or in any way any rights to receive the **GRANT** proceeds as part of such sale, and this Agreement shall not be deemed to run with the portion of the Property that is the subject of such sale.
- (3) **Prior to Substantial Completion.** Prior to substantial completion as defined in this Section 9, if *APPLICANT* sells, transfers or conveys the Property or any portion thereof comprising in excess of two (2) acres, then (A) *APPLICANT* shall provide the **CITY** prompt written notice of such sale, transfer or conveyance; and (B) unless within thirty (30) days after the date of such notice the **CITY** approves, in its sole and absolute discretion, the transfer of this Agreement and the rights to receive the **GRANT** proceeds as part of such sale, then the **CITY** shall have the right to terminate this Agreement by written notice to *APPLICANT* delivered within such thirty (30) day period following the date of *APPLICANT'S* notice, whereupon the obligations of both parties accruing from and after the date of such termination shall cease. In addition, *APPLICANT* agrees that, except as otherwise provided in Section 9(c)(5) below, prior to the substantial completion as defined in this Section 9, the assignment of this Agreement is expressly prohibited without the prior written consent of **CITY** which consent may not be unreasonably withheld.
- (4) **After Substantial Completion.** After substantial completion as defined in this Section 9, if *APPLICANT* sells, transfers or conveys the Property or any portion thereof, (A) *APPLICANT* shall notify the **CITY** within thirty (30) days of such sale, transfer or conveyance, and (B) *APPLICANT* shall, within thirty (30) days, deliver to the **CITY** a true and correct copy of the instrument whereby the transferee assumes in writing *APPLICANT'S* obligations under this Agreement.
- (5) **Assignment.** Prior to the date of substantial completion of Phase I of the **DEVELOPMENT** as defined in this Section 9, Mr. Paul L. Foster or an entity in which he has a controlling interest or a trust for the benefit of his family ("Foster") shall continuously maintain at least fifty percent (50%) ownership interest or control of *APPLICANT*, the Property and the **DEVELOPMENT** or such portion thereof as may be constructed by *APPLICANT* in its sole discretion. Documentation reasonably sufficient to verify the required ownership interest shall be provided to the **CITY** on an annual basis. Failure of Foster (or a trust for the benefit of his family created by Mr. Foster) to retain such fifty percent (50%) ownership interest

or control of **APPLICANT** for the period prior to the date of substantial completion of Phase I of the **DEVELOPMENT** as defined in this Section 9 shall constitute an event of default that may, at the option of the **CITY**, result in termination of this Agreement effective upon written notice thereof to **APPLICANT** whereupon all prior **GRANT** payments shall be recaptured and paid within sixty (60) days from the date of termination; provided, however, the parties agree that the death of Mr. Foster during the term of this Agreement and the transfer of his ownership interest to his heirs shall not be an event of default. Provided Foster retains fifty percent (50%) ownership interest or control of **APPLICANT** for the period prior to the date of substantial completion of Phase I of the **DEVELOPMENT** as specified herein, **APPLICANT** may assign this Agreement and the rights to receive the **GRANT** proceeds without the consent of the **CITY**.

- (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 individuals executing this Agreement on behalf of **CITY** have full authority to execute this Agreement and bind **CITY** to the same. The individual executing this Agreement on **APPLICANT'S** behalf warrants and represents that he or she has full authority to execute this Agreement and bind **APPLICANT** to the same.
- (f) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- (g) **Effective Date.** The effective date (the "Effective Date") of this Agreement shall be the date upon which the **APPLICANT** delivers two (2) fully executed copies of the Agreement to the City Manager. Provided, however, if the Applicant fails to deliver two (2) fully executed copies of the Agreement to the City Manager on or before the close of business on November 7, 2008, this Agreement shall be deemed to have been rejected by Applicant; this Agreement shall be void and all of the City's obligations shall cease.
- (h) **Execution of Agreement.** The El Paso City Council has authorized the City Manager to execute this Agreement on behalf of the **CITY**.
- (i) **Filing.** The **CITY** shall file this Agreement in the deed records of El Paso County, Texas. Subject to the provisions of Sections 9(c) above, the provisions of this Agreement shall be deemed to run with the land and shall be binding on the heirs, successors and assigns of **APPLICANT**.
- (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

one hundred twenty (120)

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) **Grant Period.** The Grant Period (the "Grant Period") shall commence upon the date that is twelve (12) months following the issuance of the first Certificate of Occupancy to the first lessee or user in the **LIFESTYLE COMPONENT**, which must occur no later than ~~sixty (60)~~ months following the Effective Date. If the Grant Period as defined herein has not commenced after ~~sixty (60)~~ months following the Effective Date, the City shall have the right to terminate this Agreement by providing to **APPLICANT** thirty (30) day written notice of such termination.
- (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
2 Civic Center Plaza
El Paso, Texas 79901

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

APPLICANT: Hawkins Regency, LLC
Attention: Investment Services
8080 North Central Expressway, Suite 600
Dallas, Texas 75206

Copy to: Hawkins Regency, LLC
Attention: Scott Weaver
123 W. Mills #600
El Paso, Texas 79901

- (m) **Ordinance Applicability.** The signatories hereto shall be subject to all applicable 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.

- (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) **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.
- (p) **Confidential Information.** The **CITY** acknowledges and agrees that the sales tax information to be provided by the State Comptroller hereunder is proprietary and valuable information and that any disclosure or unauthorized use thereof will cause irreparable harm to the owners and lessees or users, 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/user of a portion of the Property, or obtained from any such owner's or lessee's/user'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, or as necessary for dissemination to El Paso County officials as necessary to comply with contractual obligations to the County. 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. **APPLICANT** acknowledges that the **CITY** is subject to the Public Information Act, Chapter 552, Texas Government Code (the "Act"). The **CITY** will maintain the confidentiality of the proprietary information to the extent permitted by law and agrees that, as required by the Act, it will notify **APPLICANT** and any affected owner or lessee/user if a request relating to such proprietary information is received. **APPLICANT** further acknowledges that the Act excepts disclosure of trade secret and confidential commercial information and that **APPLICANT** and/or the affected owners and lessees/users will need to assert its proprietary interest as a basis for nondisclosure. 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.
- (q) **No Third Party Beneficiaries.** This Agreement is not intended to confer any rights, privileges, or causes of action upon any third party.

- (r) **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.
- (s) **No Joint Venture.** It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create any partnership or joint venture among the parties. The **CITY**, its past, present and future officers, elected officials, employees and agents of the **CITY**, do not assume any responsibilities or liabilities to any third party in connection with the **DEVELOPMENT** or the design, construction or operation of any portion of the **DEVELOPMENT**.
- (t) **Estoppel Certificates.** Any party hereto may request an estoppel certificate from the other party hereto so long as the certificate is requested in connection with a bona fide business purpose. In connection with any such request by **APPLICANT**, the **CITY** hereby delegates authority to the City Manager to execute and deliver to **APPLICANT** an estoppel certificate in the form attached hereto as **Exhibit "F"**.
- (u) **Maintenance of the LIFESTYLE COMPONENT AND DEVELOPMENT.** Following the completion of construction of the **LIFESTYLE COMPONENT** and **DEVELOPMENT**, if **APPLICANT** so elects to construct the entire **DEVELOPMENT** or other portions thereof, **APPLICANT** shall maintain the common areas of the **LIFESTYLE COMPONENT** and **DEVELOPMENT** in good condition and repair with a quality level consistent with other retail properties in the immediate area and in compliance with any applicable **CITY** ordinances. Without limiting the generality of the foregoing, all landscaped areas shall be trimmed and be free of dead vegetation, all paved areas shall be maintained clean and free of debris and shall be clean and treated as frequently as necessary to maintain a good appearance. All work, labor and materials provided by **APPLICANT** shall comply with all applicable laws, ordinances, rules and regulations of all governmental authorities with jurisdiction thereof.
- (v) **Non-binding Mediation.** In the event of any disagreement or conflict concerning this Agreement or the interpretation thereof, and such disagreement cannot be resolved by the signatories hereto, the signatories will submit such disagreement to non-binding mediation prior to commencing any litigation. **APPLICANT** and **CITY** shall equally share the costs associated with any such mediation. Each party shall be responsible for the payment of its own attorney fees in connection therewith.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Agreement on this 6th day of November, 2008.

CITY OF EL PASO, TEXAS

Joyce A. Wilson
Joyce A. Wilson
City Manager

APPROVED AS TO FORM:

Sylvia Borunda Firth
Sylvia Borunda Firth
Senior Assistant City Attorney

APPROVED AS TO CONTENT:

Kathryn Dodson
Kathryn Dodson, Director
Economic Development Department

ACKNOWLEDGMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the 6th day of November, 2008, by Joyce A. Wilson, as City Manager of the City of El Paso, Texas (CITY).



Kathryn Murphy
Notary Public, State of Texas
My Commission Expires: 2-11-2011

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

**APPLICANT:
HAWKINS REGENCY, LLC**

By: Regency Centers, L.P.,
a Delaware limited partnership,
its Manager

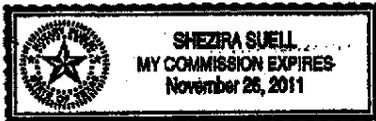
By: Regency Centers Corporation,
a Florida corporation,
its general partner

By: 
West Miller,
Senior Vice President

ACKNOWLEDGMENT

STATE OF TEXAS)
)
COUNTY OF DALLAS)

This instrument was acknowledged before me on the 3rd day of November, 2008, by West Miller, Senior Vice President of Regency Centers Corporation, a Florida corporation, general partner of Regency Centers, L.P., a Delaware limited partnership, Manager of **Hawkins Regency, LLC**, a Delaware limited liability company, on behalf of said entity. **(APPLICANT)**.



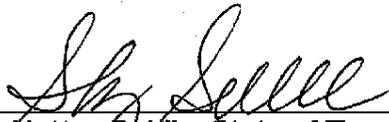

Notary Public, State of Texas
My Commission Expires:
Nov. 26, 2011

EXHIBIT A

Legal Description

PARCEL 1

43.1966 Acres

Parcel ID Number F175-999-0010-0100

Being a portion of Lots 1, 4, and 5, Block 1, Farah Subdivision, City of El Paso, El Paso County, Texas and being more particularly described by metes and bounds as follows:

BEGINNING at a found 1/2 inch rebar, whence a city monument at the center line intersection of Viscount Boulevard and Shaver Street bears the following six courses and distances:

North 28°19'47" East, 188.67 feet;

North 70°24'52" West, 18.70 feet

North 35°20'04" East, 518.07 feet;

South 70°24'52" East, 144.54 feet;

North 19°35'08" East, 440.01 feet;

South 70°24'52" East, 40.08 feet;

THENCE, South 55°33'29" East, 33.30 feet to a found 1/2-inch rebar with survey cap No. 2027;

THENCE, South 30°00'41" East, 103.56 feet to a found concrete nail with shiner;

THENCE, South 54°07'02" East, 808.49 feet to a 1/2-inch rebar found on the west boundary line of Farah Subdivision Replat;

THENCE, following the west boundary line of Farah Subdivision Replat, South 35°49'44" West, 0.58 feet to a found 5/8 inch rebar;

THENCE, continuing along the west boundary line of Farah Subdivision Replat. South 54°01'28" East, 90.11 feet to a found railroad spike, whence a city monument at the center line intersection of Larry Mahan Drive and Saddle Bronc Drive bears South 64°28'24" East, a distance of 386.16 feet;

THENCE, continuing along the west boundary line of Farah Subdivision Replat. South 35°51'06" West, 677.61 feet to a 5/8 inch rebar with SLI cap found on the northeasterly right-of-way line of Gateway West of Interstate Highway 10, whence a city monument at the intersection of said Gateway West and Larry Mahan Drive bears South 48°08'40" East, 382.09 feet;

THENCE, leaving the west boundary line of Farah Subdivision Replat and following the northeasterly right-of-way line of Gateway West the following two courses and distances:

North 54°07'03" West, 1150.97 feet to a chiseled "+" found on concrete;

North 61°38'33" West, 1411.14 feet to a 1/2 rebar found for the southeast corner of Lot 3 of said Block 1, whence a found brass cap on the northerly right-of-way line of said Gateway West bears South 61°38'33" East, a distance of 86.96 feet;

THENCE, leaving Gateway West and following the east boundary line of said Lot 3, North 28°21'57" East, 530.12 feet to a concrete nail with shiner found for the northeast corner of said Lot 3;

THENCE, following the North line of said Lot 3, the following four courses and distances:

North 61°39'22" West, 59.07 feet to a 1/2 inch rebar with cap No. TX 2027 found for the beginning of a non-tangent curve to the left;

Along the arc of a curve to the left having a central angle of 10°26'00", a radius of 1179.85 feet, an arc length of 214.85 feet, and whose long chord bears North 66°52'22" West, 214.55 feet to the beginning of a non-tangent curve to the right;

Along the arc of a curve to the right having a central angle of 10°26'02", a radius of 1239.85 feet an arc length of 225.78 feet, and whose long chord bears North 66°51'28" West, 225.47 feet to a 1/2 inch rebar with survey cap No. TX 2027 found for the end of the non-tangent curve;

North 61°34'17" West, 41.86 feet to a 1/2 inch rebar with survey cap No. 2027 found on the east right-of-way line of Hawkins Boulevard (120 feet wide) for the Northwest corner of said Lot 3;

THENCE, following the East right-of-way line of Hawkins Boulevard, North 27°59'17" East, 65.95 feet to a chiseled "+" found in concrete, whence a chiseled "+" in concrete bears North 23°59' East, 2.03 feet;

THENCE, leaving Hawkins Boulevard, South 61°39'40" East, 42.15 feet to a concrete nail with shiner found for a the beginning of a non-tangent curve to the left;

THENCE, along a curve to the left having a central angle of $10^{\circ}26'02''$, a radius of 1173.17 feet, an arc length of 213.64 feet, and whose long chord bears South $66^{\circ}48'47''$ East, 213.34 feet to a chiseled "+" found in concrete for the end of the non-tangent curve to the left;

THENCE, South $85^{\circ}54'04''$ East, 187.09 feet to a 1/2 inch rebar with survey cap No. 2027 found on the east line of Lot 4 of said Block 1;

THENCE, following the east line of said Lot 4, South $26^{\circ}47'29''$ West, 1.63 feet to a found 1/2 inch rebar with survey cap No. TX 2027;

THENCE, leaving said Lot 4, South $61^{\circ}40'41''$ East, 27.70 feet to a chiseled "+" set on pavement;

THENCE, North $28^{\circ}19'19''$ East, 1.55 feet to a point;

THENCE, South $61^{\circ}40'12''$ East, 31.28 feet to a found concrete nail with shiner;

THENCE, North $28^{\circ}19'36''$ East, 126.99 feet to a found concrete nail with shiner;

THENCE, North $73^{\circ}34'31''$ East, 14.10 feet to a found concrete nail with shiner;

THENCE, South $61^{\circ}38'34''$ East, 789.96 feet to a found concrete nail with shiner;

THENCE, South $28^{\circ}22'07''$ West, 107.97 feet to a found concrete nail with shiner;

THENCE, South $60^{\circ}44'49''$ East, 96.67 feet to a chiseled "+" found in concrete;

THENCE, South $28^{\circ}20'44''$ West, 38.01 feet to a chiseled "+" found in concrete;

THENCE, South $61^{\circ}44'21''$ East, 787.25 feet to a found 1/2-inch rebar with survey cap No. TX 2027;

THENCE, North $28^{\circ}19'47''$ East, 54.48 feet to the POINT OF BEGINNING;

Said tract containing 43.1966 acres more or less.

PARCEL 2

6.9788 Acres

Parcel ID Number F175-999-0010-1800

Being a portion of Lots 1 and 5, Block 1, Farah Subdivision, City of El Paso, El Paso County, Texas and being more particularly described by metes and bounds as follows:

BEGINNING at a 5/8 inch rebar with survey cap No. TX 2027, found on the south boundary line of Lot 10 of said Farah Subdivision, whence a city monument at the center line intersection of Viscount Boulevard and Shaver Street bears the following five courses and distances:

North 70°24'52" West, 18.70 feet;

North 35°20'04" East, 518.07 feet;

South 70°24'52" East, 144.54 feet;

North 19°35'08" East, 440.01 feet;

South 70°24'52" East, 40.08 feet;

THENCE, following the south boundary line of said Lot 10, South 70°24'52" East, 681.30 feet to a 1/2 inch rebar set for the southeast corner of said Lot 10;

THENCE, leaving said Lot 10 and following the westerly boundary line of Farah Subdivision Replat, South 21°35'44" East, 364.07 feet to a found 60d nail;

THENCE, continuing along the west boundary line of Farah Subdivision Replat, South 35°49'44" West, 223.95 feet to a found 1/2-inch rebar;

THENCE, leaving the west boundary line of Farah Subdivision Replat, North 54°07'02" West, 808.49 feet to a found concrete nail with shiner;

THENCE North 30°00'41" West, 103.56 feet to a found 1/2 inch rebar with survey cap No. TX 2027;

THENCE North 55°33'29" West, 33.30 feet to a set 1/2 inch rebar;

THENCE North 28°19'47" East, 188.67 feet to the POINT OF BEGINNING;

Said tract containing 6.9788 acres of land.

PARCEL 3

5.177 Acres

Parcel ID Number F175-999-0010-1300

BEING Lot 3, Block 1, Farah Subdivision, in the City of El Paso, El Paso County, Texas and being more particularly described as follows:

COMMENCING at a government concrete monument found at the northwest corner of Tract 1C-B, Block 5, ascarate grant; Thence North 28 degrees 21 minutes 26 seconds East a distance of 300.00 feet to a point on the North right-of-way of Gateway Blvd. West/Interstate Highway No. 10; Thence, with said right-of-way north 61 degrees 38 minutes 34 seconds West a distance of 1007.75 feet to a 3/8" rebar found and being the Point of Beginning;

THENCE, with said right-of-way North 61 degrees 38 minutes 34 seconds West a distance of 258.99 feet to a 3/8" rebar found;

THENCE, leaving said right-of-way North 28 degrees 21 minutes 43 seconds East a distance of 105.00 feet to a set PK nail with shiner;

THENCE, North 34 degrees 16 minutes 32 seconds West a distance of 315.39 feet to a set crows foot on the East right-of-way of Hawkins Blvd.;

THENCE, with said right-of-way North 28 degrees 19 minutes 19 seconds East a distance of 240.00 feet a 1/2" rebar with cap TX No 2027 found;

THENCE, leaving said right-of-way South 61 degrees 38 minutes 34 seconds East a distance of 42.05 feet to a 1/2" rebar with cap TX No 2027 found and being the PC of a curve to the left;

THENCE, 225.77 feet with the arc of said curve, having a radius of 1239.85 feet, a central angle of 10 degrees 26 minutes 00 seconds and a chord bearing South 66 degrees 51 minutes 34 seconds East a distance of 225.46 feet to a 3/8" rebar found at the PRC of a curve to the right;

THENCE, 214.85 feet with the arc of said curve, having a radius of 1179.85 feet, a central angle of 10 degrees 26 minutes 00 seconds and a chord bearing of South 66 degrees 51 minutes 34 seconds East a distance of 214.55 feet to a set 5/8" rebar with KECO cap;

THENCE, South 61 degrees 38 minutes 34 seconds East a distance of 59.00 feet to a nail and shiner TX No 2027 found;

THENCE, South 28 degrees 21 minutes 26 seconds West a distance of 530.00 feet to the POINT OF BEGINNING, CONTAINING 5.177 acres or 225,501 square feet.

EXHIBIT "B"
Description of Lifestyle Amenities

Upon **APPLICANT'S** election to construct the entire **DEVELOPMENT** or other portions thereof, the following lifestyle amenities shall be distributed throughout and will be substantially similar to those depicted in **APPLICANT'S** approved detailed site development plan attached hereto as **Exhibit "B-1"**.

- Fountains (Decorative, Entry Feature, Interactive, Wall)
- Landscape Lighting
- Sculptures/Bronzes
- Pergola

- Decorative Pots/Planters

- Highway Landscaping if allowed by TXDOT
- Enhanced Pedestrian Walks (Colored & Stamped Concrete Pavers)
- Children's Play/Gym Area

- WIFI System

- Upgraded Landscaping
- Entry Features
- Pedestrian Connectivity/Landscape Walkways
- Benches and Decorative Trash Receptacles
- Bike Racks
- Patio Dining Areas

- Outdoor Seating in Gathering Areas
- Unique Design Features
 - *15+ Material Variations*
 - *Fabric and Metallic Awnings (Decorative and Functional)*
 - Lit Windows in Tower Elements

EXHIBIT "B-1"
Detailed Site Development Plan

EXHIBIT "C"
Grant Submittal Package Form

Hawkins Regency, LLC believes that it has substantially met its obligations under the Chapter 380 Agreement dated _____ and signed by _____ Pursuant to the agreement, Hawkins Regency, 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 Qualified Expenditures
2. Property Tax Payment Receipt(s) of payment for Tax year.

If Sales & Use Tax Rebates are also being requested, then the following additional information is also required:

1. Documentation to evidence the amount of sales taxes paid as a result of the Qualified Sales on the **DEVELOPMENT**.
2. Waiver of Sales Tax Confidentiality Forms for retail operations that will be producing Qualified Sales.

It is understood by Hawkins Regency, LLC that the City of El Paso has up to 90 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"
Qualified Expenditures

Site Preparation Work shall consist of: demolition and removal (except for certain materials that **APPLICANT** plans to reuse at the site) from the Property of (i) the buildings presently situated on the Property, and (ii) all related improvements that the **CITY** has reasonably determined are necessary to render the Property to a standard developable site condition consistent with current City standards, including but not limited to asphalt, concrete, retaining walls, utilities, etc.

The following developable costs will be reimbursable for Site Preparation Work and TIA mitigation:

- Site costs including grading and earthwork
- Asbestos abatement
- Building demolition
- Billboard & foundation demolition
- Utility pole demolition & repair
- Service road & retaining wall demolition
- Utility demolition and relocation
- Miscellaneous demolition
- Paving recycle
- Air monitoring control
- Relocation of storm sewer
- Retaining wall construction
- Re-facing of I-10 outlet
- Water main extension
- Underground detention
- Public and private underground utility construction & repair
- I-10 & Hawkins deceleration lane construction

Hawkins/Gateway intersection modification
Pre-development civil engineering
SWPPP (Stormwater Pollution Prevention Plan)
Off-site traffic improvements
Architect Pre-Development Planning
Geotechnical Survey & Testing
Surveys (structural, ALTA, utility, grading)
Traffic Impact Analysis and expenses incurred to implement recommendations
EPWU Design Fee
Testing & Inspection Fees
Environmental Testing
Construction Security & Traffic Control
Construction Management Fees
Tipping Fees
Permit Fees

EXHIBIT "E"
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 Hawkins Regency, LLC, a Delaware limited liability company, its successors, assigns or nominees, and the City of El Paso, Texas and the County of El Paso, Texas. I understand that this waiver applies only to our retail store located in the _____ Development 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 on Texas Sales Tax Permit)

Authorized Signature

Printed Name:
Title:
Phone:

EXHIBIT "F"
Estoppel

City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901

_____, 20____

Hawkins Regency, LLC

Re: Chapter 380 Economic Development Program Agreement (the "Agreement") dated effective _____, 2008, by and between the **CITY OF EL PASO, TEXAS** (the "**City**"), a Texas home rule municipal corporation, and **HAWKINS REGENCY, LLC**, a Delaware limited liability company ("**Owner**")

Ladies and Gentlemen:

1. Owner is and remains the Applicant under the Agreement covering the Property.
2. The Agreement contains the full and complete agreement of the parties with respect to the subject matter thereof. No other understandings (oral or written) exist with respect thereto. The Agreement is in full force and effect.
3. Any known default:[]
4. The remaining term of the Agreement is _____.
5. To the best of City's knowledge, as of the date hereof there is no known default under the Agreement, except as noted in paragraph 3 above. To the best of City's knowledge, there exists no condition, event, fact, or occurrence which, by service of notice or passage of time, or both, if uncured, would constitute a default on the part of Owner under the Agreement except as noted in paragraph 3 above.
6. City acknowledges that Applicant is desirous of obtaining a loan from [] ("Lender") in the approximate amount of \$, secured by a lien against Applicant's interest in the Property (the "Loan").

The City has delivered this Estoppel in satisfaction of the provisions of Section 9(t) of the Agreement. The person executing this Estoppel has the power and authority to execute and deliver this Estoppel on behalf of the City. The City certifies that Owner, [Purchaser and any lender or [Lender] and their respective affiliates, successors, assigns and/or participants, may rely on the representations contained herein in connection with [the acquisition of the Property and any loan secured thereby] or [the Loan].

CITY OF EL PASO, TEXAS

City Manager

APPROVED AS TO FORM:

Sylvia Borunda Firth
Senior Assistant City Attorney

APPROVED AS TO CONTENT:

Kathryn Dodson, Director
Economic Development Department

EXHIBIT "G"
Restricted Area

[Attached]

**EXHIBIT "G"
RESTRICTED AREA**

