



Padgett Stratemann & Co. LLP

CERTIFIED PUBLIC ACCOUNTANTS & BUSINESS ADVISORS

INDEPENDENT ACCOUNTANT'S REPORT  
ON APPLYING AGREED-UPON PROCEDURES

Mr. Rodney Gonzales, Acting Director  
City of Austin  
Economic Growth and Redevelopment Services Office  
301 West 2nd Street, Suite 2030  
Austin, Texas 78701

We have performed the procedures enumerated below, which were agreed to by the City of Austin ("City") solely to assist the specified user in evaluating the City's assertion that Simon Property Group, Inc. ("Simon Property Group") on behalf of its affiliate, The Domain Shopping Center, L.P. ("the Domain") has complied with certain provisions, as described below, of the Chapter 380 Economic Development Agreement ("Agreement"), approved by the City Council on May 15, 2003 and executed by the City Manager on June 13, 2003. The City is the specified user of this report. The City's management is responsible for the determination of compliance by Simon Property Group with the Agreement. This engagement to apply agreed-upon procedures was performed in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of the specified user of this report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

Our procedures and findings are as follows:

1. With reference to Section 4(a) of the Agreement, we obtained from the City and inspected the notice to proceed documents (Letters of Intent #2, #3 and #4) between Simon Property Group and Beck Group. We confirmed that approval to proceed with site preparation work was issued on or before May 4, 2005 and approval to initiate construction was issued on August 30, 2005. No exceptions were found as a result of the foregoing procedure.
2. With reference to Section 4(a) of the Agreement, we obtained from the City and inspected the Domain Grand Opening brochure and collection of articles from the Austin American Statesman, In Fact News, Daily Texan and News 8 Austin and ascertained that these sources reported that the Domain opened to the public on March 9, 2007. No exceptions were found as a result of the foregoing procedure.

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3. With reference to Section 4(b)i of the Agreement, we obtained from the City and inspected documents from the Domain to confirm that the Domain Fund was capitalized following Board of Directors' approval on May 11, 2005 as follows:
  - a. Inspected a letter dated July 21, 2005 from the Simon Property Group to Fred Evins with the City and an excerpt from the minutes of the May 11, 2005 meeting of the Simon Property Group Board of Directors contained in §III(a) of the Domain Compliance Document that confirmed Simon Property Group's Board of Directors approved the Domain budget, including \$1,000,000 to be used for the purpose of assisting local tenants, on May 11, 2005. No exceptions were found as a result of the foregoing procedure.
  - b. Inspected Letter of Intent #4 to confirm that authorization to proceed with construction of the chilled water system was issued on August 30, 2005. No exceptions were found as a result of the foregoing procedure.
4. With reference to Section 4 (b) ii of the Agreement, we obtained from the City and inspected signed statements of Bettysport Partners, L.L.C.; St. Thomas, Inc.; Tea Craft, dba The Steeping Room; Luxe Apothetique; Ks Home Designs dba Loft; Chocogelatier Austin Domain L.L.C. dba Viva Chcolato!; and Meridian Bliss (§III(b) of the Domain Compliance Document). We confirmed that each entity referenced above provided a signed statement certifying that the business was a locally owned business whose principal place of business is located in Travis, Hays or Williamson County, Texas. No exceptions were found as a result of the foregoing procedure.
5. With reference to Section 4(b)iii of the Agreement, we obtained from the City and inspected §III(c) of the Domain Compliance Document, which contains a document titled "The Domain Fund Allocation (update July 2008)", and redacted copies of leases with Bettysport Partners, L.L.C.; St. Thomas, Inc.; Tea Craft, dba The Steeping Room; Luxe Apothetique; Ks Home Designs dba Loft; Chocogelatier Austin Domain L.L.C. dba Viva Chcolato!; and Meridian Bliss (§III(d) of the Domain Compliance Document). We inspected the lease terms for the required reimbursement to each tenant up to an agreed-upon amount for the cost of "Tenant's Work" and ascertained that the amount was included in the column titled Tenant Allowance in the document titled "The Domain Fund Allocation (update July 2008)" contained in §III(c) of the Domain Compliance Document and the total of the column amounted to \$1,755,813. No exceptions were found as a result of the foregoing procedure.
6. With reference to Section 4(b)iii of the Agreement, we obtained from the City and inspected copies of cancelled checks (§III(d) of the Domain Compliance Document) and ascertained that \$1,082,061.28 has been paid to Bettysport Partners, L.L.C.; St. Thomas, Inc.; Tea Craft, dba The Steeping Room; Ks Home Designs dba Loft and Chocogelatier Austin Domain, LLC dba Viva Chcolato! as shown on the Summary of Domain Fund as Reported by Simon Property Group in

June 2008 (revised on August 27, 2008). No exceptions were found as a result of the foregoing procedure.

7. With reference to Section 4(b)iv of the Agreement, we obtained from the City and inspected redacted copies of leases between Simon Property Group and Bettysport Partners, L.L.C.; St. Thomas, Inc.; Tea Craft, dba The Steeping Room; Luxe Apothetique; Ks Home Designs dba Loft; Chocogelatier Austin Domain L.L.C. dba Viva Chcolato!; and Meridian Bliss and ascertained that each lease was for a term of at least five years. No exceptions were found as a result of the foregoing procedure.
8. With reference to Section 4 (b)v of the Agreement, we obtained from the City and inspected statements from Bettysport Partners, L.L.C.; St. Thomas, Inc.; Tea Craft, dba The Steeping Room; Luxe Apothetique; Ks Home Designs dba Loft; Chocogelatier Austin Domain L.L.C. dba Viva Chcolato!; and Meridian Bliss. We confirmed that each of these tenants certified that no repayment was expected in return for funds provided to reimburse the cost of constructing their interior improvements at the Domain. No exceptions were found as a result of the foregoing procedure.
9. With reference to Section 4(b)vii of the Agreement, we obtained from the City and inspected §III(c) and §III(e) of the Domain Compliance Document and related supporting documentation contained therein and ascertained that the First Annual Report of the Domain Fund includes the following information:
  - a. We inspected the First Annual Report of the Domain Fund referred to above and noted that it includes the date each local business opened (or is scheduled to open) at the Domain. No exceptions were found as a result of the foregoing procedure.
  - b. We inspected the First Annual Report of the Domain Fund referred to above and noted that it includes a description of the distribution of the funds. No exceptions were found as a result of the foregoing procedure.
  - c. We inspected the First Annual Report of the Domain Fund referred to above and noted that it includes the balance of the funds. No exceptions were found as a result of the foregoing procedure.
  - d. We inspected the First Annual Report of the Domain Fund referred to above and noted that it includes an analysis of the performance results in terms of cumulative and long term presence of local small businesses at the Domain. No exceptions were found as a result of the foregoing procedure.
10. With reference to Section 4(b)vii of the Agreement, we obtained from City and inspected Addendum to the First Annual Report of the Domain Fund and ascertained that it includes a description of solicitation efforts targeted to promote local business inclusion at the Domain. No exceptions were found as a result of the foregoing procedure.

11. With reference to Section 4(b)vii of the Agreement, we obtained from the City and inspected the Domain floor plan and stores index and two sets of date-stamped photographs for each business. We ascertained that the dates contained on these photographs for Bettysport, St. Thomas, The Steeping Room, Luxe Apothetique, Loft and Viva Chocolato! are dated on or before July 21, 2008 in order to show that operations had commenced on or before July 21, 2008. We ascertained that the dates contained on the second set of photographs for Bettysport, St. Thomas, The Steeping Room, Luxe Apothetique, Loft and Viva Chocolato! are dated on or after September 1, 2008 in order to show that operations remained open on or after September 1, 2008. No exceptions were found as a result of the foregoing procedure.
12. With reference to Section 4(c) of the Agreement, we obtained from the City and inspected correspondence dated February 21, 2008 from the City to Residences at the Domain and ascertained that the City acknowledged the completion of 390 apartment units on February 21, 2008 in this correspondence contained in §IV(a) of the Domain Compliance Document. No exceptions were found as a result of the foregoing procedure.
13. With reference to Section 4(c) and Exhibit C of the Agreement, we obtained from the City and inspected documents described below in order to show that the Project's residential units comply with S.M.A.R.T. Housing guidelines as follows:
  - a. We inspected the September 14, 2007 revised S.M.A.R.T. Housing certification letter contained in §IV(b) of the Domain Compliance Document, which requires the applicant to demonstrate compliance with the reasonably-priced standard after completion of the homes before a Certificate of Occupancy was granted and ascertained:
    - i. Neighborhood Housing and Community Development (NHCD) certified the proposed construction met S.M.A.R.T. Housing standards at the pre-submittal stage. No exceptions were found as a result of the foregoing procedure.
    - ii. The development was required to obtain final approvals from Austin Energy's Green Building Program. No exceptions were found as a result of the foregoing procedure.
    - iii. The development was required to pass a final inspection by NHCD to certify that accessibility standards have been met. No exceptions were found as a result of the foregoing procedure.
  - b. We inspected the materials contained in §IV(b) of the Domain Compliance Document and ascertained that it includes a certificate dated June 12, 2007 from the Austin Energy Green Building Program awarding Residences at the Domain a three-star Green Building rating. No exceptions were found as a result of the foregoing procedure.

- c. We inspected the materials contained in §IV(b) of the Domain Compliance Document and ascertained that it includes an email dated January 18, 2008 from Stuart Hersh from the City of Austin stating that the initial 390 apartments at the Domain passed final accessibility inspection. No exceptions were found as a result of the foregoing procedure.
  - d. We inspected the materials contained in §IV(a) of the Domain Compliance Document and ascertained that it includes a letter dated February 21, 2008 from the City of Austin to Residences at the Domain stating that residences at the Domain was currently in compliance with applicable affordability requirements. No exceptions were found as a result of the foregoing procedure.
14. With reference to Section 4(c) of the Agreement, we obtained from the City and inspected the agreement between EGP Management, LLC and Travis County and the amendment to that agreement contained in §XI(b) of the Domain Compliance Document. We confirmed that according to the agreement, Travis County agreed to contribute an amount estimated at the net present value of \$5,000,000 when discounted at an annual rate of 7.5% to EGP Management for the Domain project. We inspected the amendment of Economic Development Agreement between Travis County and Simon Property Group in October 2007 and ascertained that EGP Management LLC assigned the agreement to Simon Property Group. No exceptions were found as a result of the foregoing procedure.
15. With reference to Section 4(c) of the Agreement, we obtained from the City and inspected correspondence between the EGRSO and NHCD and ascertained that the City and Simon Property Group have agreed that the economic impact of reducing affordability level from 80% MFI to 65% MFI was \$1,373,096. No exceptions were found as a result of the foregoing procedure.
16. With reference to Section 4(c) of the Agreement, we obtained from the City and inspected the materials contained in §IV(a) of the Domain Compliance Document which includes a letter dated February 21, 2008 from Regina Copic, S.M.A.R.T. Housing Development Manager, to the Residences at the Domain. We ascertained that NHCD confirmed compliance with affordability requirements and that the threshold needed to meet full compliance was 10% of the units serving households at 65% or below the median family income. No exceptions were found as a result of the foregoing procedure.

17. With reference to Section 4(d) of the Agreement, we selected a sample of 7 Tenant Employment Reports (TER) from a summary of the reports provided by the Domain in §V(b) of the Domain Compliance Document. For each business selected, we inspected the following information provided by the Texas Workforce Commission (TWC) to the City:

- Email confirmation, and
- The number of jobs.

We compared the number of jobs as reported by TWC against the TER. For 4 of the responses we confirmed that there were less jobs reported in the TER than reported to TWC for the same period. The remaining 3 responses showed more jobs reported in the TER than TWC for the same period.

- a) For each business reporting more jobs in the TER than were reported to TWC, we selected one additional business for further review and reperformed the procedure. We received one response where there were less jobs reported in the TER than there were reported to TWC for the same period. There was no response from TWC for the other two businesses selected for review.
- b) We selected an additional 5 businesses for further review and reperformed the procedure. We received 3 responses where there were more jobs reported in the TER than reported to TWC for the same period. There was no response from TWC for the other two businesses selected for review.

Fifteen businesses were ultimately selected for confirmation, which amounts to approximately 20% of the total businesses in the Domain. We received a total 5 responses where there were less jobs reported in the TER than reported to TWC for the same period. We received a total of 6 responses where there were more jobs reported in the TER than reported to TWC for the same period. Finally, there was no response from TWC for 4 of the businesses selected for review.

18. We obtained a schedule entitled the Domain Employees Count Calculation, as prepared by the City of Austin Economic Growth and Redevelopment Services Office, and performed the following:

- a. We verified the mathematical accuracy of the calculation.
- b. We inspected the documents contained in Section I of the Domain Compliance Document and ascertained that the square footage amounts shown in the “Area Constructed Information” were in agreement.
- c. We inspected section 4(d) of the Agreement and ascertained that the “Multiplier for Phased Construction” was 0.0016.

- d. We inspected the documents contained in Section 5(b) of the Domain Compliance Document and ascertained that the "Total Employees Reported" was 1,791.
- e. We compared the amounts in the "Sampling Information" under the columns entitled "Employees Reported" and "Employees Confirmed" to the documents inspected in conjunction with performing Procedure 17 and found they were in agreement.

No exceptions were found as a result of the foregoing procedures.

- 19. With reference to Section 5(d) of the Agreement, we obtained from the City and inspected email communication between David Armbrust and Capital Metro (§XI(c) of the Domain Compliance Document) and confirmed that a message dated August 4, 2006 stated, "Simon made a proposal to CapMetro for financial participation in the Domain based upon a number of different meetings and discussions over the last year and a half or so". No exceptions were found as a result of the foregoing procedure.
- 20. With reference to Sections 6 and 7 of the Agreement, we obtained from the City and inspected the July 23, 2008 memorandum from Fred Evins, EGRSO Redevelopment Project Manager. We ascertained that the document described how the City obtained information about sales taxes collected by the Domain retailers and waived Simon Property Group's requirement to provide quarterly sales tax reports to the City. No exceptions were found as a result of the foregoing procedure.
- 21. With reference to Section 8 of the Agreement, we obtained from the City and inspected copies of the plat contained in §VII(a) and §VII(b) of the Domain Compliance Document and confirmed that the owner identified the exact boundaries of the project tract through a subdivision plat and that the area of the tract did not exceed 55 acres. No exceptions were found as a result of the foregoing procedure.
- 22. With reference to Section 9 of the Agreement, we obtained from the City and inspected documents confirming the open house invitation and correspondences involving the City's Department of Small and Minority Business Resources as follows:
  - a. We inspected the documents contained in §VIII(b) of the Domain Compliance Document and ascertained that they included copies of advertising flyers, an agenda and a sign-in sheet for an open house held August 4, 2005 for 18 tentative bid packages for the Domain. No exceptions were found as a result of the foregoing procedure.

- b. We inspected the documents contained in §VIII(b) of the Domain Compliance Document and ascertained that they included copies of a flyer and a sign-in sheet for an open house held September 1, 2005 for three bid packages for the Domain. No exceptions were found as a result of the foregoing procedure.
- c. We inspected the documents contained in §VIII(b) of the Domain Compliance Document and ascertained that they included copies of the following documents regarding an open house for 18 tentative bid packages for the Domain on October 13, 2005: flyer, and a sign-in sheet and email from Lopez-Phelps and Associates to The Beck Group with contact information for five electrical contractors. No exceptions were found as a result of the foregoing procedure.
- d. We inspected the documents contained in §VIII(c) of the Domain Compliance Document and ascertained that they contain a report by Amelia Lopez-Phelps describing the Outreach / Pre-Bid Presentation Process for the Pre-Bid Presentation Meeting held December 9, 2005. No exceptions were found as a result of the foregoing procedure.
- e. We inspected the documents contained in §VIII(c) of the Domain Compliance Document and ascertained that they included copies of an advertising flyer and sign-in sheets for an open house held December 9, 2005 for approximately 60 bid packages for the Domain Residential Multi-Family Project. No exceptions were found as a result of the foregoing procedure.
- f. We inspected an advertising flyer for an open house and ascertained that it was for an open house held December 16, 2005 for 5 bid packages for the Domain. No exceptions were found as a result of the foregoing procedure.
- g. We inspected an email from the City of Austin Department of Small and Minority Business Resources (SMBR) dated January 30, 2008 and ascertained that the email identified activities that took place as follows:
  - i. We inspected the email referred to above and noted that SMBR provided MBE/WBE availability lists of vendors to Amelia Lopez-Phelps. No exceptions were found as a result of the foregoing procedure.
  - ii. We inspected the email referred to above and noted that it stated that notices were sent out identifying bid opportunities and dates of outreach events. No exceptions were found as a result of the foregoing procedure.

- iii. We inspected the email referred to above and noted that it stated that five outreach events were held with MBE/WBE vendors throughout the duration of the project. No exceptions were found as a result of the foregoing procedure.
- 23. With reference to Section 9 of the Agreement, we obtained from the City and inspected a letter dated June 3, 2005 from Lopez-Phelps & Associates, LLC to the Simon Group and a letter dated September 7, 2005 from Lopez-Phelps & Associates, LLC to Columbus Realty Partners, Ltd. Contained in §VIII(a) of the Domain Compliance Document and ascertained that Simon Property Group and Columbus Realty Partners, Ltd. retained a third party consultant specializing in outreach to qualified M/WBE contractors and consultants. No exceptions were found as a result of the foregoing procedure.
- 24. With reference to Sections 5(b)i and 6 of the Agreement, we obtained from the City and inspected the City of Austin Address Point GIS Layer Map showing the Domain Phase I and the Sales Tax Area Report received from the Texas Comptroller of Public Accounts and ascertained that every taxpayer listed in the Sales Tax Area Report had an address in the Domain Phase 1. No exceptions were found as a result of the foregoing procedure.
- 25. With reference to Sections 5(b)ii and 6 of the Agreement, we obtained from the City and inspected the Sales Tax Area Report received by the City from the Texas Comptroller of Public Accounts. We confirmed that the sum of the tax payments to the City of Austin for the filing period September 2007 through April 2008 amounted to \$1,183,704.46. We confirmed that 82% of \$1,183,704.46 is \$970,637.66 and that 2% of \$1,183,704.46 is \$23,674.09. No exceptions were found as a result of the foregoing procedure.
- 26. With reference to Sections 2 and 6 of the Agreement, we obtained from the City and inspected the Certificate of Occupancy and confirmed that the effective date was March 7, 2007. We obtained from the City and inspected Section 2 of the Agreement and confirmed that the Sales Tax Effective Date defined in the Agreement was 180 days after the first Certificate of Occupancy was issued, or September 3, 2007. No exceptions were found as a result of the foregoing procedure.
- 27. With reference to Sections 2 and 5(c) of the Agreement, we obtained from the City and inspected the Certificate of Occupancy and confirmed that the effective date was March 7, 2007. We obtained from the City and inspected Section 2 of the Agreement and confirmed that the Ad Valorem Tax Effective Date defined in the Agreement was the first January 1st following the issuance of a Certificate of Occupancy for the Project or first phase, or January 1, 2008. No exceptions were found as a result of the foregoing procedure.

We were not engaged to and did not conduct an examination, the objective of which would be the expression of an opinion on compliance. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of the City and is not intended to be and should not be used by anyone other than this specified party.

*Padgett, Struvernann + Co., LLP*

October 1, 2008  
Austin, Texas