

**CITY OF AUSTIN / ENDEAVOR REAL ESTATE GROUP,  
or its affiliates**

**CHAPTER 380**

**ECONOMIC DEVELOPMENT AGREEMENT**

This Chapter 380 Economic Development Agreement ("Agreement") is made and entered into by and between EGP MANAGEMENT, L.L.C., a Texas limited liability company, its successors and assigns ("Owner") and the CITY OF AUSTIN, TEXAS, a home rule city and municipal corporation ("City").

**RECITALS**

WHEREAS, City has adopted Resolution No. <sup>030515-04</sup> attached as Exhibit "A" ("Resolution"), establishing and authorizing the City Manager to make economic development grants to Owner in recognition of the positive economic benefits to the City through Owner's efforts to develop approximately forty-two (42) acres not to exceed fifty five (55) acres of land out of the area more particularly described on the attached Exhibit "B" ("Property") as a mixed use project containing residential and non-residential uses; and

WHEREAS, the City desires to offer incentives to Owner over a period of time which will enable Owner to develop the Property in a manner proposed by Owner;

WHEREAS, such property is within City's Desired Development Zone, will provide rental units in compliance with the City's S.M.A.R.T. Housing Program, will assist small local businesses, will add significant new revenues to the City's tax base and will create jobs which will help stimulate the overall local economy; and

NOW, THEREFORE, in consideration of the mutual benefits and promises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Owner agree as follows:

1. Authority. The City's execution of this Agreement is authorized by Chapter 380 of the Texas Local Government Code and the Resolution and constitutes a valid and binding obligation of the City. Owner's execution and performance of this Agreement constitutes a valid and binding obligation of Owner in the event Owner proceeds with the development of the Property. The City acknowledges that Owner is acting in reliance upon the City's performance of its obligations under this Agreement in making its decision to commit substantial resources and money to develop the Property.

2. Definitions.

"**Ad Valorem Tax Effective Date**" is the first January 1st following the issuance of a certificate of occupancy for the Project or the first phase if constructed in phases (defined below).

**“Ad Valorem Tax Revenues”** means the amount of property taxes collected by the City on real property owned or leased by Owner, a portion of which will be repaid to Owner in the form of Chapter 380 Payments. With respect to property leased by Owner, property tax revenues include that portion of annual tax, prorated on a daily basis, which is attributable to the period in which Owner was the lessee of such property.

**“Chapter 380 Payment(s)”** means the amount paid by the City to Owner under the Program (defined below).

**“Effective Date”** is the date this Agreement is signed by the City and Owner.

**“One Cent Sales Tax Revenues”** means that portion of Sales Tax Revenues (defined below) resulting from the imposition of a one percent municipal sales tax, such as that presently in effect pursuant to Texas Tax Code §321.101(a) and §321.103. If the City ever elects to charge less than a one percent (1%) sales tax but is allowed by law to collect a sales tax of one percent (1%) or more, then instead of being based on actual collections, One Cent Sales Tax Revenues attributable to sales tax collected shall be deemed to be computed as if the City did elect to charge a one percent sales tax.

**“Program”** means the economic development program established by the City pursuant to Texas Local Government Code Chapter 380 and under the Resolution to promote local economic development and stimulate business and commercial activity within the City.

**“Project”** is Owner's planned development of the Property which shall consist of a "Class A" urban village. The Domain Urban Village Project is anticipated to include approximately 500,000 – 670,000 square feet of some or all of the following uses: lifestyle shopping, restaurants, entertainment, grocery, medical office, hotel and/or recreation space and a minimum of 300 S.M.A.R.T. Housing units. The Project will include wide sidewalks in the retail-pedestrian areas (standard sidewalks along traffic thoroughfares where required), significant public open space with outside pedestrian amenities, such as: benches, landscape features, fountains or water features, dining areas and a combination of surface and structured parking.

**“Project Area”** is the area within the Property which will be developed for the Project.

**“Sales Tax Effective Date”** is the date which is one hundred eighty (180) days after Owner's receipt of the first certificate of occupancy for the Project or the first phase, if constructed in phases.

**“Sales Tax Revenues”** means the amount of sales tax collected by City arising from the Project, a portion of which will be paid to Owner in the form of Chapter 380 Payments. Sales Tax Revenues consist of two (2) components:

a. **“Sales Tax Collected”** – The City's share of all sales tax collected from or attributable to the Project; and

b. **“Sales/Use Tax Paid”** - Any sales/use tax paid by Owner which results in sales/use tax revenue to the City.

The term "Sales Tax Revenues" shall include any taxes authorized by the State in the future which are intended to replace sales or use tax revenues currently available to the City.

3. Term. This Agreement shall become enforceable upon execution by the City and Owner and shall be effective on the Effective Date. Owner and the City shall confirm the Effective Date in writing once it has occurred. This Agreement shall terminate upon the earlier to occur of (i) twenty (20) years after the Ad Valorem Effective Date or the Sales Tax Effective Date, whichever is later or (ii) Owner's receipt of the total Chapter 380 Payments equal to the Maximum Payment Amount (defined in Section 5d). In recognition of the fact that Chapter 380 Payments by necessity are calculated and paid after taxes have been assessed and paid to the City, and therefore always run in arrears, the term of this Agreement shall be deemed to include any payments otherwise due and payable to Owner which extend beyond the original term of the Agreement.

4. Owner Obligations. In consideration of the City's participation in the Program, if Owner proceeds with the Project, Owner agrees that the following performance guidelines shall be met:

a. Commencement of Project. Owner shall issue a notice to proceed to a contractor to commence construction of the Project no later than four (4) years after the Effective Date and shall diligently pursue such construction. In the event that Owner fails to commence construction of the commercial portion of the project within such four (4) year period, Owner shall reimburse City for any Chapter 380 Payments received by Owner prior to such date and this Agreement shall terminate and be of no further effect.

b. Support for Small Local Businesses. During the term of this Agreement, Owner will use One Million Dollars (\$1,000,000) of the total Chapter 380 Payments to assist small local businesses to locate at the Project. The small, local business fund for The Domain ("Domain Fund") will operate under the following parameters:

- i. The Domain Fund shall be fully capitalized upon commencement of construction of the Project.
- ii. The funds shall be used to attract and facilitate the presence of small, locally-owned businesses to The Domain from Travis, Williamson and Hays Counties.
- iii. The funds shall be generally used for each endowment fund candidate in some or all of the following manners:
  - \* To be set aside for the cost of designing/constructing the interior improvements of a tenant's premises, and/or
  - \* To be set aside as security (collateral) for small business loans made to a tenant, and/or
  - \* To be used toward all or part of the cost for advertising the new store location, and/or

\* To subsidize the rental rate required by the Project over the terms of the lease.

- iv. The terms of the leases shall generally be for a period of five (5) years.
- v. Funds used toward interior improvements, relocation costs and/or rent reduction will typically be advanced to the tenant without a repayment obligation.
- vi. Assessment of allocation of funds, credit risk, lease terms, tenant's use and compatibility within the project will be at the discretion of Owner.
- vii. The Domain Fund activities and performance measures/outcomes may be monitored by the City Manager for compliance with the above parameters. Owner shall provide an annual report to the City Manager and to the director for Economic Development showing how the Domain Fund has been utilized in accordance with iii above for the preceding twelve (12) month period. The annual report shall contain a performance report section including but not limited to, information on the current and long-term presence of local businesses in the Project by tracking which businesses remain in the Project and for what period of time, a description of the distribution of funds, a description of advertising targeted to promote small business inclusion and the balance of funds. The report shall include the results of exit interviews with any small local business leaving The Domain. Exit interviews shall be conducted so long as there is a balance in the Domain Fund. Performance results shall be analyzed in terms of cumulative and long-term presence of small and local businesses at the Project. Any balance remaining in the Domain Fund at the end of the term of this Agreement shall be returned to the City.

c. S.M.A.R.T. Housing. Owner shall issue a notice to proceed to a contractor to commence construction of a minimum of three hundred (300) residential units within six (6) years after the Effective Date and shall diligently pursue such construction. The Project's residential units will qualify under the City's current "S.M.A.R.T. Housing" guidelines, set forth on the attached Exhibit "C", with a potential exception of not meeting the 1/4<sup>th</sup> mile minimum distance from the nearest transit route. (Owner agrees to use reasonable efforts to fully comply with program, however not doing so in this area is not considered an event of default). At least ten percent (10%) of the units shall meet the affordability guidelines. In the event that Owner fails to commence construction of the S.M.A.R.T. Housing within such six (6) year period, Owner shall reimburse City for any Chapter 380 Payments received by Owner prior to such date and this Agreement shall terminate and be of no further effect.

In order to make the ten percent (10%) of the units that comply with the affordability guidelines even more affordable to lower wage earners, Owner shall further reduce the affordability index from eighty percent (80%) of the median wage to sixty-five percent (65%). Owner shall be allowed to recoup the economic impact on the Project resulting from this reduction through economic development contributions received from Travis County, if any. Any funds received from Travis County shall first be used for this purpose and then the remainder shall be applied to reduce the Maximum Payment Amount, subject to the provisions set forth in Section 5d. Owner shall not be obligated to make this reduction unless economic development contributions are available from Travis County in an amount sufficient to reimburse Owner for the economic impact of this reduction and the parties have agreed upon the value of the economic impact.

d. Employment Opportunities. Upon completion of all phases of the Project, at least eleven hundred (1100) permanent jobs will have been created at the Project. In the event the project is phased, full time equivalent jobs will be created on a basis .0016 jobs per square foot constructed, exclusive of residential uses.

5. Chapter 380 Payments.

a. Sharing of Tax Benefits. The City shall pay to Owner portions of the Sales Tax Revenues and Ad Valorem Revenues paid to the City from the Project in accordance with this Section. It is the intent of the parties that the Chapter 380 Payments represent a sharing of tax benefits which inure to the City as a result of Owner's development of the Property.

b. Sales Tax Revenues.

i. For a period of five (5) years beginning on the Sales Tax Effective Date, eighty percent (80%) of the One Cent Sales Tax Revenues shall automatically become part of the Chapter 380 Payments due and payable to Owner. For a period of fifteen (15) years following the initial five (5) year period, fifty percent (50%) of the One Cent Sales Tax Revenues shall automatically become part of the Chapter 380 Payments due and payable to Owner. The Chapter 380 Payments with respect to the One Cent Sales Tax Revenues shall be paid by the City to Owner upon the earlier to occur of (i) thirty (30) days after the City receives Sales Tax Revenues from the State of Texas, or (ii) ninety (90) days following the final day of the month in which those sales taxes were generated.

ii. In addition to the percentages of the One Cent Sales Tax Revenues set forth in Section 5bi, an additional two percent (2%) of the One Cent Sales Tax Revenues shall become part of the Chapter 380 Payments thereby increasing the percentage to eighty-two percent (82%) during the first five (5) years of the term of this Agreement and then fifty-two percent (52%) for years six (6) through year twenty (20) or the end of the term of this Agreement, whichever comes first ("Additional Sales Tax Payments"). Within fifteen

(15) days of receipt, Owner shall remit the Additional Sales Tax Payments to the City and the City shall deposit the funds in the Austin Housing Finance Corporation or a successor entity should it cease to exist. City and Owner acknowledge that Owner is merely a conduit for the collection of the Additional Sales Tax Payments and that such funds belong to the City in all respects. It is the intention of the parties that the collection and transmittal of the Additional Sales Tax Payments shall be revenue neutral to Owner and are not intended to cause Owner to incur tax liability of any nature. To the extent necessary to avoid any such tax liability in the future, Owner and City agree to amend this Agreement accordingly.

c. Property Tax Revenues. For a period of twenty (20) years beginning on the Ad Valorem Tax Effective Date, twenty-five percent (25%) of the incremental Ad Valorem Revenues shall automatically become part of the Chapter 380 Payments due and payable to Owner. "Incremental" means the increase in the Ad Valorem Tax over the ad valorem tax that would be due on the value of the Property and improvements as of May 1, 2003. The parties acknowledge that for the current tax year, the Property has been assessed as part of a larger parcel. For purposes of this Agreement, the value of the Property and the improvements is deemed to be \$235,228 per acre as of May 1, 2003. Owner shall notify the City in writing of any sums paid by Owner to the County tax collector in the form of city ad valorem taxes during the term of this Agreement, ("Ad Valorem Revenue Notice"). The Chapter 380 Payments with respect to the incremental Ad Valorem Revenues shall be based on the amount stated in the Ad Valorem Revenue Notice, which shall be verified by the City, and shall be repaid to Owner by the City on an annual basis for the preceding year on or before the first day of March following the tax year for which they were paid.

d. Payment Terms. The total Chapter 380 Payments arising during the term of this Agreement to be paid to Owner shall not exceed the equivalent of Twenty-Five Million Dollars (\$25,000,000) calculated on a net present value basis when discounted at an annual rate of seven and one-half percent (7.5%) ("Maximum Payment Amount"). The Chapter 380 Payments shall be adjusted over time, to reflect the net present value of such amount as of May 1, 2003, so that Owner will receive an amount of money equivalent to the value of its Chapter 380 Payments calculated in the year 2003, even though the Chapter 380 Payments will be made to Owner at a much later date. Except as set forth in Section 4c, if Owner receives economic development contributions with respect to the Project from the Capital Metropolitan Transportation Authority and/or Travis County, Texas, the Maximum Payment Amount shall be reduced accordingly; however, the maximum amount of the reduction to the Maximum Payment Amount shall be Seven Million Five Hundred Thousand Dollars (\$7,500,000.00) calculated on a Net Present Value basis, using an annual discount rate of seven and one-half percent (7.5%). Any amounts payable to Owner over and above such amount by entities other than the City shall be retained by Owner. Owner shall use reasonable efforts to seek such contributions and grants.

e. Changes in Law. If, during the term of this Agreement, state law applicable to municipal taxation changes either in the form of sales taxes or ad valorem taxes, and as a result, the Chapter 380 Payments differ from the amount which would have been paid to

Owner under the laws in effect as of the Effective Date of this Agreement, then the parties agree to adjust the Chapter 380 Payments using whatever discretionary taxes and revenues that are legally available to the City which can be allocated to the Chapter 380 Payments. However, this section is not intended to require the City to use funds from other sources which are not within the City's discretion to allocate to the Project, so as to achieve the same economic benefits to both parties as would have resulted had the law not changed.

6. Sales Tax Reports. Owner shall report to the City on a quarterly basis the amount of sales tax revenues generated from the Project for the previous calendar quarter. Such reports shall be based upon reports filed by the Project's tenants with the State Comptroller's office. The City shall have the right to audit Owner's reports with reasonable notice; provided, however, such audits shall be performed in a manner to maintain the confidentiality of the information provided by the Project's tenants. The City shall not make or retain copies of the materials audited.

7. Mutual Assistance. City and Owner will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement, and to aid and assist each other in carrying out such terms and provisions in order to put each other in the same economic condition contemplated by this Agreement regardless of any changes in public policy, the law or taxes or assessments attributable to the Property.

8. Permitting and Subdivision. The City shall work with Owner to expeditiously process permit applications. Prior to the commencement of construction of the Project, Owner shall identify the exact boundaries of the Project, not to exceed 55 (fifty-five) acres out of the Property through a subdivision plat application filed with the City.

9. Minority/Women Owned Business Enterprises ("MWBE"). Owner commits to use good faith efforts to cause its agents and contractors to comply with the spirit and intent of the City's MWBE requirements and to retain a third party consultant specializing in outreach to qualified minority/women business enterprise contractors and consultants.

10. Representations and Warranties. The City represents and warrants to Owner that the Program and this Agreement are within its authority, and that it is duly authorized and empowered to establish the Program and enter into this Agreement, unless otherwise ordered by a court of competent jurisdiction. Owner represents and warrants to City that it has the requisite authority to enter into this Agreement.

11. Default. If either the City or Owner should default in the performance of any obligations of this Agreement, the other party shall provide such defaulting party written notice of the default, and a minimum period of thirty (30) days to cure such default, prior to instituting an action for breach or pursuing any other remedy for default. If the City remains in default after notice and opportunity to cure, Owner shall have the right to pursue any remedy at law or in equity for the City's breach. If Owner remains in default after notice and opportunity to cure, the City's remedy shall be limited to a termination of the Chapter 380 Payments which have accrued after the date of such default. Any Chapter 380 Payment from City to Owner which is not timely paid by City shall incur interest at the highest rate per annum allowed by the applicable law of the State of Texas from the date such Chapter 380 Payment is due until paid

12. Attorney's Fees. In the event any legal action or proceeding is commenced between the City and Owner to enforce provisions of this Agreement and recover damages for breach, the prevailing party in such legal action shall be entitled to recover its reasonable attorney's fees and expenses incurred by reason of such action, to the extent allowed by law.

13. Entire Agreement. This Agreement contains the entire agreement between the parties. This Agreement may only be amended, altered or revoked by written instrument signed by the City and Owner.

14. Binding Effect. This Agreement shall be binding on and inure to the benefit of the parties, their respective successors and assigns.

15. Assignment. Except as provided, Owner may not assign all or part of its rights and obligations to a third party without prior written approval of the City, which approval shall not be unreasonably withheld or delayed. Notwithstanding anything to the contrary, Owner may assign all or part of its rights and obligations without the prior consent of the City to any party affiliated with Owner by reason of controlling, being controlled by, or being under common control, with Owner, to a subsequent owner of all or any part of the Project, to a tenant in the Project or to a third party lender advancing funds for the acquisition, construction or operation of the Project.

16. Termination. In the event Owner elects not to proceed with the Project as contemplated by this Agreement, Owner shall notify the City in writing, and this Agreement and the obligations on the part of both parties shall be deemed terminated and of no further force or effect. In addition, this Agreement shall terminate when Owner has been paid the Maximum Payment Amount in full.

17. Notice. Any notice and or statement required and permitted to be delivered shall be deemed delivered by actual delivery, facsimile with receipt of confirmation, or by depositing the same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses:

**Owner:** Endeavor Real Estate Group  
Attn: Bryce Miller and Kirk Rudy  
1209 West Fifth Street, Suite 200  
Austin, Texas 78703-5204  
Ph: (512) 682-5500  
Fx: (512) 682-5506  
re: Domain 380 Agreement

with a copy to: Mr. David B. Armbrust  
100 Congress Ave., Suite 1300  
Austin, Texas 78701  
Ph: (512) 435-2301  
Fx: (512) 435-2360

**City:** City Manager  
124 West 8th Street  
Austin, Texas 78701  
(P.O. Box 1088, Austin, Texas 78767)  
Ph: (512) 499-2200  
Fx: (512) 499-2832

with a copy to: City Attorney  
114 West 7th Street, Fifth Floor  
Austin, Texas 78701  
(P.O. Box 1546, Austin, Texas 78767)  
Ph: (512) 499-2175  
Fx: (512) 499-2912

Either party may designate a different address at any time upon written notice to the other party.

18. Interpretation. Each of the parties have been represented by counsel of their choosing in the negotiation and preparation of this Agreement. Regardless of which party prepared the initial draft of this Agreement, this Agreement shall, in the event of any dispute, however its meaning or application, be interpreted fairly and reasonably and neither more strongly for or against any party.

19. Applicable Law. This Agreement is made, and shall be construed and interpreted, under the laws of the State of Texas and venue shall lie in Travis County, Texas.

20. Severability. In the event any provisions of this Agreement are illegal, invalid or unenforceable under present or future laws, and in that event, it is the intention of the parties that the remainder of this Agreement shall not be affected. It is also the intention of the parties of this Agreement that in lieu of each clause and provision that is found to be illegal, invalid or unenforceable, a provision be added to this Agreement which is legal, valid or enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

21. Paragraph Headings. The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the various and several paragraphs.

22. No Third Party Beneficiaries. This Agreement is not intended to confer any rights, privileges or causes of action upon any third party.

23. Exhibits. The following Exhibits "A" - "C" are attached and incorporated by reference for all purposes:

Exhibit "A": Resolution No. \_\_\_\_\_  
Exhibit "B": Property Description  
Exhibit "C": S.M.A.R.T. Housing Guidelines

EXECUTED to be effective as of the 13 day of June, 2003.

**EGP MANAGEMENT, L.L.C.**  
a Texas limited liability company

By: Kiril Rudy  
Printed Name: Kiril Rudy  
Title: E. v. p.

Date: June 13, 2003

**CITY OF AUSTIN, TEXAS,**  
a home rule city and municipal corporation

By: Toby H. St. John  
Toby H. St. John, City Manager,

APPROVED as to form:

David Lloyd  
Asst, City Attorney

## **EXHIBIT A**

### **RESOLUTION NO. 030515-04**

**WHEREAS**, the development of a proposed mixed-use project containing residential and non-residential uses, known as "The Domain," generally bounded on the north by Duval Road, on the west by Loop 1, on the south by Braker Lane, and on the east by Burnet Road, will provide substantial economic benefits to the City by adding to the City's ad valorem tax base, attracting significant new sales tax revenues into the City, revitalizing an underdeveloped industrial/manufacturing area, creating a substantial number of new jobs, providing SMART Housing opportunities, and providing financial assistance to small local businesses and adding significant new tax revenues to Capital Metro and the Austin Independent School District; and

**WHEREAS**, the SMART Housing component of the project will include 10% of the residential units being made available as reasonably priced units, helping to maintain a base of housing within Austin that is available to Austin workers with a range of incomes; and

**WHEREAS**, mixed use development of the kind proposed in The Domain is unlikely to occur without a public/private partnership, and the proposed development is likely to attract business from inside and outside the Austin area; and

**WHEREAS**, the proposed incentives and estimated return of tax revenue are calculated and based solely on the commercial portion of the project; and

**WHEREAS**, a proposed \$1,000,000 assistance fund for small businesses to be located at the project will help to foster and maintain small businesses in the area; and

**WHEREAS**, The Domain is located in the City's Desired Development Zone; and

**WHEREAS**, the City Council has determined that the commercial impact of The Domain will be a catalyst for economic development benefiting the entire community, will promote local economic development, and will stimulate business and commercial activity in the municipality; and

**WHEREAS**, Chapter 380 of the Texas Local Government Code authorizes local economic development programs, and the proposed incentives constitute an economic development program of the City, and promote the public purpose of economic development; **NOW, THEREFORE**,

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

1. The City Council adopts the above recitals as findings.

2. The City Manager is directed and authorized to negotiate and execute the Economic Development Agreement with the developer, Endeavor Real Estate Group or its affiliate (“Endeavor”), in substantially the form attached as Exhibit A to this resolution, under the authority of Chapter 380 of the Local Government Code, with additional provisions as follows:
  - a. The City Manager is directed to negotiate an additional provision requiring that Endeavor will use good faith efforts to cause their agents and contractors to comply with the spirit and intent of the City’s Minority and Women Business Enterprise ordinance and retain a third party consultant specializing in outreach to Minority/Women Business Enterprise contractors and consultants.
  - b. The City Manager is directed to negotiate an additional provision to increase the annual sales tax revenue rebate by 2% for each year of the rebate, and require that the additional 2% be deposited with the Austin Housing Finance Corporation for use in providing affordable housing. This requirement is made with the goal of increasing the contribution of this economic development project to affordable housing in the city in order to promote the availability of housing to citizens with a range of incomes, which is a public purpose of the city and which promotes economic development by enabling workers of all incomes to live affordably in Austin.

c. The City Manager is directed to negotiate a provision requiring that in order to make the ten percent (10%) of the units that comply with the affordability guidelines even more affordable to lower wage earners, Owner shall further reduce the affordability index from eighty percent (80%) of the median wage to sixty five percent (65%). The Owner shall be allowed to recoup the economic impact on the Project resulting from this reduction through economic development contributions received from Travis County, if any. Any funds received from Travis County shall first be used for this purpose and then the remainder shall be applied to reduce the Maximum Payment Amount, subject to the provisions set forth in Section 5d of the draft Economic Development Agreement. Owner shall not be obligated to make this reduction unless economic development contributions are available from Travis County in an amount sufficient to reimburse Owner for the economic impact of this reduction.

d. The City Manager is directed to amend page 4, b. iii or vii of the draft Economic Development Agreement to require the annual report for monitoring the agreement to include the description of the distribution of funds, description of advertising targeted to promote small business inclusion and the balance of funds; and to include provisions to allow for an exit interview with any small and local business leaving the Domain project after having located there; and further page 4, No. vii, the fi

sentence should read, "The Domain Fund activities and performance measures/outcomes will be monitored by the City Manager for compliance with the above parameters. Performance results should be analyzed in terms of cumulative and long term presence of small and local business at the Domain."

ADOPTED: May 15, 2003

ATTEST: \_\_\_\_\_

Shirley A. Brown  
City Clerk

A DRAFT VERSION OF THE AGREEMENT IS ATTACHED  
TO THE RESOLUTION 030515-04 FILED  
AT THE CITY CLERK'S OFFICE, CITY OF AUSTIN, TEXAS

## EXHIBIT B

67.473 ACRES  
DOMAIN RETAIL  
ENDEAVOR REAL ESTATE GROUP

FN NO. 03-111(MTH)  
MAY 14, 2003  
BPI JOB NO. 1000-37.97

### DESCRIPTION

OF A 67.473 ACRE TRACT OF LAND OUT OF THE JAMES ROGERS SURVEY NO. 19, SITUATED IN THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS, BEING A PORTION OF THAT CERTAIN REMAINDER OF 234.762 ACRES OF LAND CONVEYED TO JER AUSTIN TECH, L.P. BY DEED OF RECORD IN DOCUMENT NO. 1999161226 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, AND BEING A PORTION OF THAT CERTAIN 70.494 ACRES OF LAND CONVEYED TO MULTILAYER TEK, L.P. BY DEED OF RECORD IN VOLUME 13200, PAGE 157 OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS; SAID 67.473 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

**BEGINNING**, at a square head bolt found in the easterly right-of-way line of Mopac Expressway North (R.O.W. Varies), being the southwesterly corner of Lot 3 North Loop Business Park Section One-A, a subdivision of record in Book 85, Page 194C of the Plat Records of Travis County, Texas, same being the northwesterly corner of said Remainder of 234.762 acre tract and hereof;

**THENCE**, S62°17'19"E, leaving the easterly right-of-way line of Mopac Expressway North, along the southerly line of said Lot 3 North Loop Business Park Section One-A, being a portion of the northerly line of said Remainder of 234.762 acre tract and the northerly line hereof, a distance of 633.13 feet to a 1/2 inch iron rod with cap set at the common southerly corner of said Lot 3 and Lot 4 of said North Loop Business Park Section One-A, being the northwesterly corner of that certain Tract of land conveyed by Quitclaim Deed to Crow-Gottesman Buchanan #5, Ltd., by deed of record in Volume 9553, Page 416 of the Real Property Records of Travis County, Texas;

**THENCE**, leaving the common southerly corner of said Lot 3 and Lot 4, along the common line of said Quitclaim Deed and said 234.762 acre tract, for a portion of the northerly line hereof, the following two (2) courses and distances:

- 1) S28°06'25"W, a distance of 31.21 feet to a 1/2 inch iron rod found;
- 2) S62°13'48"E, a distance of 103.84 feet to the northeasterly corner hereof;

**THENCE**, leaving the southerly line of said Quitclaim Deed, over and across said Remainder of 234.762 acre tract, for a portion of the easterly line hereof, the following twelve (12) courses and distances:

- 1) S27°46'12"W, a distance of 41.58 feet to an angle point;

- 2) N64°14'12"W, a distance of 40.11 feet to the point of curvature of a non-tangent curve to the left;
- 3) Along said non-tangent curve to the left having a radius of 276.32 feet, a central angle of 26°23'12", an arc length of 127.25 feet and a chord which bears N79°50'29"W, a distance of 126.13 feet to the end of said curve;
- 4) S81°50'11"W, a distance of 442.19 feet to an angle point;
- 5) S76°56'42"W, a distance of 197.61 feet to an angle point;
- 6) S73°07'50"W, a distance of 126.14 feet to an angle point;
- 7) S68°40'38"W, passing at a distance of 161.62 feet a PK Nail with shiner set, and continuing for a total distance of 501.87 feet to a PK Nail with shiner set;
- 8) S58°29'31"W, a distance of 199.83 feet to a PK Nail with shiner set at the point of curvature of a tangent curve to the left;
- 9) Along said tangent curve to the left having a radius of 123.00 feet, a central angle of 41°03'48", an arc length of 88.15 feet and a chord which bears S37°57'37"W, a distance of 86.28 feet to a PK Nail with shiner set at the point of tangency;
- 10) S17°25'42"W, a distance of 423.81 feet to a PK Nail with shiner set;
- 11) S22°20'50"W, a distance of 293.35 feet to a PK Nail with shiner set;
- 12) S17°08'34"W, a distance of 993.78 feet to a 1/2 inch iron rod with cap set in the northerly line of said 70.494 acre tract, being the southerly line of said Remainder of 234.762 acre tract;

**THENCE**, S72°17'15"E, along the common line of said 70.494 acre tract and said Remainder of 234.762 acre tract, for a portion of the easterly line hereof, a distance of 431.35 feet to an angle point, from which a 1/2 inch iron rod found in said common line bears S72°17'16"E, a distance of 28.64 feet;

**THENCE**, S17°59'39"W, leaving the southerly line of said Remainder of 234.762 acre tract, over and across said 70.494 acre tract, passing at a distance of 21.51 feet a 1/2 inch iron rod found in the common line of said Remainder of 234.762 acre tract and said 70.494 acre tract, again passing at a distance of 478.39 feet a 1/2 inch iron rod found in said common line, and again leaving said common line, over and across said Remainder of 234.762 acre tract, continuing for a total distance of 567.30 feet to an angle point;

**THENCE**, N72°20'03"W, over and across said Remainder of 234.762 acre tract, passing at a distance of 63.16 feet a 1/2 inch iron rod found in the common line of said 70.494 acre tract and said Remainder of 234.762 acre tract, and continuing along said common line for a total distance of 324.86 feet to a 1/2 inch iron rod found;

**THENCE**, S17°59'46"W, along the common line of said 70.494 acre tract and said Remainder of 234.762 acre tract, a distance of 402.46 feet to the southeasterly corner hereof, from which a PK Nail found in said common line bears S17°59'46"W, a distance of 131.64 feet;

**THENCE**, N72°00'14"W, leaving the irregular southerly line of said Remainder of 234.762 acre tract, over and across said 70.494 acre tract, for the southerly line hereof, a distance of 816.84 feet to a point in the curving easterly right-of-way line of Missouri Pacific Railroad for the southwesterly corner hereof;

**THENCE**, along the non-tangent curving easterly right-of-way line of Missouri Pacific Railroad, being a portion of the westerly line of said 70.494 acre tract and hereof having a radius of 3854.86 feet, a central angle of 06°59'58", an arc length of 470.92 feet and a chord which bears N00°04'24"E, a distance of 470.63 feet to a 1/2 inch iron rod found at the common westerly corner of said 70.494 acre tract and said Remainder of 234.762 acre tract;

**THENCE**, continuing along the curving easterly right-of-way line of Missouri Pacific Railroad, being the westerly line of said Remainder of 234.762 acre tract and hereof, the following two (2) courses and distances:

- 1) Along a non-radial curve to the left having a radius of 3854.86 feet, a central angle of 03°05'26", an arc length of 207.94 feet and a chord which bears N04°12'36"W, a distance of 207.92 feet to a square head bolt found at the end of said curve;

- 2) N04°57'01"W, a distance of 430.75 feet to a square head bolt found in the easterly right-of-way line of Mopac Expressway North;

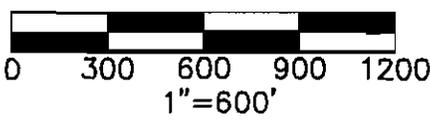
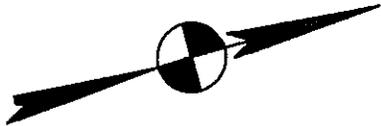
**THENCE**, leaving the easterly right-of-way line of Missouri Pacific Railroad, along the easterly right-of-way line of Mopac Expressway North, being the westerly line of said Remainder of 234.762 acre tract and hereof, the following four (4) courses and distances:

- 1) N39°34'07"E, a distance of 523.81 feet to a square head bolt found at the point of curvature of a tangent curve to the right;
- 2) Along said tangent curve to the right having a radius of 5699.58 feet, a central angle of 10°55'42", an arc length of 1087.12 feet and a chord which bears N45°01'57"E, a distance of 1085.47 feet to a square bolt found at the point of compound curvature of a non-radial curve;
- 3) Along said non-radial compound curve having a radius of 7404.44 feet, a central angle of 10°54'09", an arc length of 1408.96 feet and a chord which bears N55°55'05"E, a distance of 1406.83 feet to a PK Nail found at the point of compound curvature of a non-radial curve;
- 4) Along said non-radial compound curve to the right having a radius of 2261.83 feet, a central angle of 07°41'50", an arc length of 303.85 feet and a chord which bears N65°04'41"E, a distance of 303.63 feet to the **POINT OF BEGINNING**, containing an area of 67.473 acres (2,939,112 sq. ft.) of land, more or less, within these metes and bounds.

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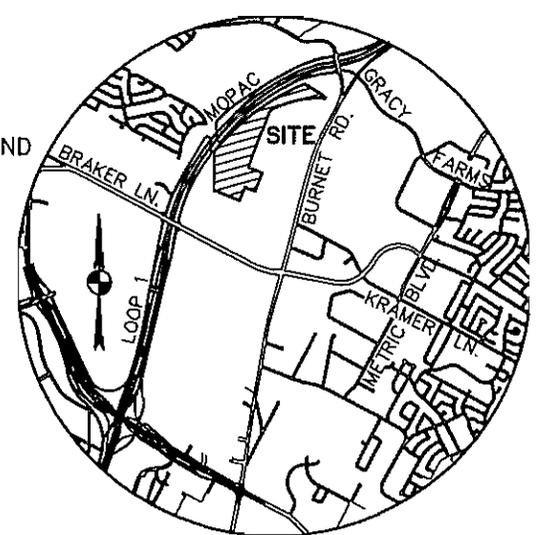
  
5/14/03  
JOHN T. BILNOSKI, R.P.L.S.  
STATE OF TEXAS NO. 4998



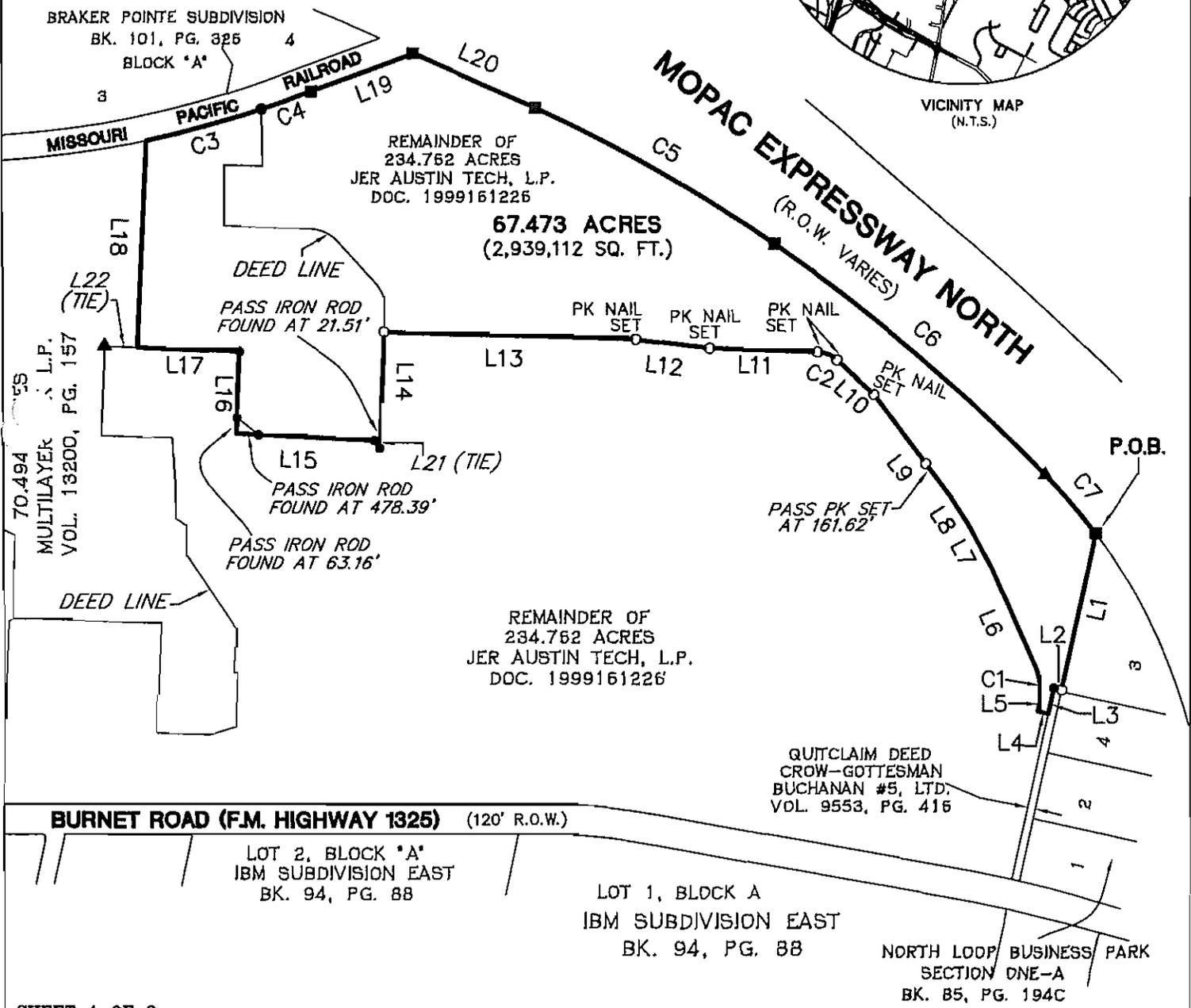


**LEGEND**

- 1/2" IRON ROD FOUND
- SQUARE HEAD BOLT FOUND
- ▲ P.K. NAIL FOUND
- 1/2 INCH IRON ROD SET
- P.O.B. POINT OF BEGINNING



VICINITY MAP  
(N.T.S.)



SHEET 1 OF 2

**Bury+Partners**  
 Consulting Engineers and Surveyors  
 Austin, Texas Tel 512/328-0011 Fax 512/328-0325  
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**SKETCH TO ACCOMPANY DESCRIPTION**  
 OF 67.473 ACRES OF LAND OUT OF THE JAMES ROGERS SURVEY NO. 19, SITUATED IN THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS, BEING A PORTION OF THAT CERTAIN REMAINDER OF 234.782 ACRES CONVEYED TO JER AUSTIN TECH, L.P. BY DEED OF RECORD IN DOCUMENT NO. 1999161226 OF THE OFFICIAL RECORDS OF TRAVIS COUNTY, TEXAS, AND BEING A PORTION OF THAT CERTAIN 70.494 ACRES OF LAND CONVEYED TO MULTILAYER TEK, L.P. BY DEED OF RECORD IN VOLUME 13200, PAGE 157 OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS

**ENDEAVOR REAL ESTATE GROUP**  
**DOMAIN RETAIL**

### CURVE TABLE

No.	Delta	Radius	Arc Length	Chord Length	Chord Bearing
C1	26°23'12"	276.32	127.25	126.13	N79°50'29"W
C2	41°03'48"	123.00	88.15	86.28	S37°57'37"W
C3	06°59'58"	3854.86	470.92	470.63	N00°04'24"E
C4	03°05'26"	3854.86	207.94	207.92	N04°12'36"W
C5	10°55'42"	5699.58	1087.12	1085.47	N45°01'57"E
C6	10°54'09"	7404.44	1408.96	1406.83	N55°55'05"E
C7	07°41'50"	2261.83	303.85	303.63	N65°04'41"E

### LINE TABLE

No.	Bearing	Distance
L1	S62°17'19"E	633.13'
L2	S28°06'25"W	31.21'
L3	S62°13'48"E	103.84'
L4	S27°46'12"W	41.58'
L5	N64°14'12"W	40.11'
L6	S81°50'11"W	442.19'
L7	S76°56'42"W	197.61'
L8	S73°07'50"W	126.14'
L9	S68°40'38"W	501.87'
L10	S58°29'31"W	199.83'
L11	S17°25'42"W	423.81'
L12	S22°20'50"W	293.35'
L13	S17°08'34"W	993.78'
L14	S72°17'15"E	431.35'
L15	S17°59'39"W	567.30'
L16	N72°20'03"W	324.86'
L17	S17°59'46"W	402.46'
L18	N72°00'14"W	816.84'
L19	N04°57'01"W	430.75'
L20	N39°34'07"E	523.81'
L21	S72°17'16"E	28.64'
L22	S17°59'46"W	131.64'

SHEET 2 OF 2

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#### SKETCH TO ACCOMPANY DESCRIPTION

OF 87.473 ACRES OF LAND OUT OF THE JAMES ROGERS SURVEY NO. 19, SITUATED IN THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS, BEING A PORTION OF THAT CERTAIN REMAINDER OF 234.782 ACRES CONVEYED TO JER AUSTIN TECH, L.P. BY DEED OF RECORD IN DOCUMENT NO. 1999161226 OF THE OFFICIAL RECORDS OF TRAVIS COUNTY, TEXAS, AND BEING A PORTION OF THAT CERTAIN 70.484 ACRES OF LAND CONVEYED TO MULTILAYER TEK, L.P. BY DEED OF RECORD IN VOLUME 13200, PAGE 157 OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS

**ENDEAVOR REAL ESTATE GROUP**

**DOMAIN RETAIL**

DATE: 05/14/03

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FN No.: FNO3-111(MTH)

DRAWN BY: MTH

PROJ. No: 1000-37.97

EXHIBIT C



# S.M.A.R.T. Housing Policy

Safe • Mixed Income • Accessible • Reasonably Priced • Transit Oriented

## Resource Guide



Prepared by:

Neighborhood Housing and Community Development

City of Austin  
P.O. Box 1088  
Austin, Texas 78767  
512/974.3100  
[www.cityofaustin.org/housing](http://www.cityofaustin.org/housing)

January 2003



#### **CITY COUNCIL**

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Mayor

Jackie Goodman  
Mayor Pro Tem

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Toby Futrell

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Chief Michael McDonald

#### **NEIGHBORHOOD HOUSING AND COMMUNITY DEVELOPMENT DEPARTMENT**

Paul Hilgers, Director

# S.M.A.R.T. HOUSING GUIDE

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## 1. S.M.A.R.T. HOUSING POLICY

### Overview

The **S.M.A.R.T.** (Safe, Mixed-Income, Accessible, Reasonably-priced, Transit-Oriented) **Housing** Policy Initiative is designed to stimulate the production of housing for low and moderate income residents of Austin. The housing meets the City's Green Building standards and is located in neighborhoods throughout the City of Austin.

**S.M.A.R.T. Housing** staff work with developers and builders of new single-family and multi-family developments that meet **S.M.A.R.T. Housing** standards. The City of Austin provides fee waivers and **S.M.A.R.T. Housing** development review, typically significantly faster than conventional review. This initiative applies not only to new subdivisions but also to single lot, infill development.

The goals of **S.M.A.R.T. Housing** are to:

- ◆ Provide capital recovery fee; development review and inspection fee; and certain construction inspection fee exemptions to promote the development of **S.M.A.R.T. Housing**
- ◆ Use public resources to leverage private investment
- ◆ Stimulate the development of housing on vacant lots in new and existing subdivisions
- ◆ Promote the use of existing City infrastructure and services
- ◆ Promote the creation of alternative funding sources for the development of **S.M.A.R.T. Housing** (Safe, Mixed-Income, Accessible, Reasonably-Priced, and Transit-Oriented)
- ◆ Support the goals of the Sustainable Community Initiative

Thank you for your interest in **S.M.A.R.T. Housing**. For more information on this policy and other incentives for the new construction of reasonably-priced housing in Austin, please contact **Gina Copic, S.M.A.R.T. Housing Manager, City of Austin, Department of Neighborhood Housing and Community Development**, at (512) 974-3180 or [regina.copic@ci.austin.tx.us](mailto:regina.copic@ci.austin.tx.us).

## S.M.A.R.T. Housing Policy Initiative

The **S.M.A.R.T. Housing** Policy Initiative has the following eight components:

1. It names the Austin Housing Finance Corporation (AHFC) as the lead agency to foster partnerships with the home building industry to develop, finance, construct, rehabilitate, relocate, and operate affordable housing in the City of Austin.  
*Result: Naming AHFC as the lead agency creates clear accountability for results.*
2. It designates the Neighborhood Housing and Community Development Department (NHCD) as the lead agency on housing policy issues; the single point of contact to facilitate **S.M.A.R.T. Housing** developments; and the lead agency to foster partnerships with neighborhoods. The single point of contact designation empowers NHCD to assume the same type of leadership role that other City departments have accepted for major employers and school district developments. NHCD becomes responsible for working with other City departments who verify that **S.M.A.R.T. Housing** developments are sited in a manner consistent with applicable federal and city policies.  
*Result: Establishing a single point of contact for residents, builders, and city staff facilitates the development of S.M.A.R.T. Housing developments.*
3. It provides the AHFC the right of first acceptance of any surplus city property to determine if **S.M.A.R.T. Housing** is a viable option for the site.  
*Result: By providing surplus city lands suitable for housing at below market prices, the city encourages construction of more reasonably priced homes. Developments must be consistent with adopted neighborhood plans. Affected neighborhood organizations are included in the stakeholder discussions on potential use of surplus city land for housing.*
4. It allows full or partial fee waivers for developments that make a portion of their units reasonably priced (available to families who earn no more than 80% of median family income and who would spend no more than 30% of their family income on housing). Fee waivers for up to 1,000 living unit equivalents can be provided annually. Developments requesting **S.M.A.R.T. Housing** incentives for four or fewer housing units are required to be 100% reasonably-priced and meet all other **S.M.A.R.T. Housing** standards. Developments involving five or more housing units could receive full or partial waivers using the sliding scale listed below if all of the units meet **S.M.A.R.T. Housing** standards. The sliding scale creates incentives for “reasonably-priced” housing while addressing neighborhood concerns that all affordable housing developments not be concentrated in one neighborhood or one part of the city.

### **A builder provides**

10% S.M.A.R.T. Reasonably Priced  
20% S.M.A.R.T. Reasonably Priced  
30% S.M.A.R.T. Reasonably Priced  
40% S.M.A.R.T. Reasonably Priced

### **The City of Austin provides**

25% Fee Waivers & Fast-Track Review  
50% Fee Waivers & Fast-Track Review  
75% Fee Waivers & Fast-Track Review  
100% Fee Waivers & Fast-Track Review

The following types of fees are waived: Development Review and Inspection (Zoning, Subdivision, Site Plan, Building Plan Review and Permit); Water and Wastewater Capital Recovery; and Public Works Construction Inspection.

If the development is in the Desired Development Zone, fees are waived administratively unless the applicant claims full regulatory exemption pursuant to House Bill 1704. If the development is in the Drinking Water Protection Zone (DWPZ), fees are waived administratively unless the applicant requests an environmental variance or exemption pursuant to House Bill 1704. The City Council must approve fee waivers for any development requesting full 1704 exemption or a development requesting an environmental variance in the DWPZ. Existing housing governed by On-Site Sewage Facilities regulations would also be eligible for fee waivers under **S.M.A.R.T. Housing** eligibility guidelines.

*Result: Builders who meet the **S.M.A.R.T. Housing** standards would receive full or partial waiver of Water and Wastewater Capital Recovery fees, Development Review and Inspection fees, and Public Works Construction Inspection fees based upon the amount of reasonably-priced housing provided.*

5. It includes the adoption of housing rehabilitation guidelines as part of the simplified land development code. The City Council adopted single-family guidelines as part of the ordinance amending the Building Code on April 6, 2000.  
*Result: Adoption of rehabilitation guidelines as part of the City Code provides a clear policy direction that encourages homeowners and contractors to maintain and remodel existing housing stock that to meet city standards for safety and sanitation.*
6. It supports rehabilitation code education for City of Austin employees and their customers.  
*Result: Reduced costs associated with failed inspections and re-do work, and the availability for homeowners to move forward with their home improvement projects.*
7. It supports a code enforcement policy that addresses neighborhood concerns about code violations and unsightly and illegal practices in older neighborhoods.  
*Result: NHCD will assist in training neighborhood residents to conduct surveys identifying lots or buildings with code violations, and assist residents in communicating with their neighbors about these violations. Additionally, NHCD would route unresolved complaints to the appropriate city department for investigation and resolution.*
8. Requires NHCD to catalogue opportunities for improvement identified during the review, construction, and inspection of **S.M.A.R.T. Housing** developments and requires collaboration among city departments in implementing these suggested improvements. *Result: The **S.M.A.R.T. Housing** Initiative recognizes that many stakeholders have commented that improved coordination among departments is critical if the goal of reasonably-priced housing is to be realized.*

## **S.M.A.R.T. Housing Certification Standards**

The **S.M.A.R.T. Housing** Fee Waiver Initiative involves an application and certification process. **S.M.A.R.T. Housing** certification is available for the new construction of single-family and multi-family developments that meet the **S.M.A.R.T. Housing** standards of **safe, mixed-income, accessible, reasonably-priced, transit oriented and complies with Green Building** minimum standards. The following section will provide you with a detailed discussion of each of the criteria for **S.M.A.R.T. Housing**.

### Safe

Safe means that the development complies with the Land Development Code and the adopted Building Codes for the City of Austin. For more information on development in Austin visit the City's website at <http://www.cityofaustin.org/development>.

### Mixed Income / Reasonably Priced Standards

S.M.A.R.T. Housing is a mixed-income strategy to encourage the production of reasonably-priced housing throughout the City. Mixed-income means that the development includes at least 10% "reasonably-priced" housing units and all units meet applicable **S.M.A.R.T. Housing** standards.

Reasonably-priced means that a percentage of the units in the development must be available to families who earn no more than **80% of median family income** for the City of Austin and who would spend no more than 30% of their family income on housing (unless federal or state funding sources establish a different standard of affordability). A family meets the standard if its income is 80% MFI or below as established in federal, state or City guidelines. An applicant who sells or rents a home to a family at 80% MFI or below remains in compliance as long as an eligible family remains in the home for the five-year affordability period.

All designated "reasonably-priced" units must be "reasonably-priced" at initial occupancy and must remain "reasonably-priced" for at least five years. Failure to meet the requirements on "reasonably-priced" designated units during the 5-year affordability period will require repayment of all waived fees, with interest. Compliance for rental units may be monitored in accordance with tax credit or bond rules or state/federal monitoring standards. An increase in an eligible occupant's household income subsequent to original occupancy does not preclude the unit from being counted as one of the "reasonably-priced" units unless this income increase is a result of additional occupants with income moving into the unit.

**Developments of four or fewer units: All units must be reasonably priced.**

**Developments of five or more units: Fees are waived according to the sliding scale below:**

#### **A builder provides**

10% S.M.A.R.T. Reasonably Priced  
20% S.M.A.R.T. Reasonably Priced  
30% S.M.A.R.T. Reasonably Priced  
40% S.M.A.R.T. Reasonably Priced

#### **The City of Austin provides**

25% Fee Waivers & Fast-Track Review  
50% Fee Waivers & Fast-Track Review  
75% Fee Waivers & Fast-Track Review  
100% Fee Waivers & Fast-Track RevThe

Owner/Applicant/Developer will be required to sign a note payable to the City for the amount

of the exemptions received. This agreement will be secured by a deed of trust, lien, or a surety bond for an equivalent amount, which will be released by the Director of NHCD after the five-year affordability period.

For more information about available programs (such as Down Payment Assistance) targeted to families who earn 80% of median family income or less, visit the Austin Housing Finance Corporation website at <http://www.cityofaustin.org/ahfc>. AHFC's programs can make it easier for income-eligible tenants or homebuyers to afford homes in Austin.

### Accessibility and Visitability Requirements

The federal government, the Texas Legislature, and the Austin City Council provide funding and other forms of assistance for reasonably priced housing. In addition, they have established standards when public funding or assistance is provided for housing for low and moderate-income families. Some of these standards are different than the development and occupancy standards that an owner or applicant would be required to meet if the development is funded only with private dollars.

#### Accessibility Standards for Persons with Disabilities

Federal and state requirements provide for people who are mobility-impaired, hearing-impaired, visually impaired, or who have been diagnosed with Acquired Immunity Deficiency Syndrome (AIDS) to have access to housing. These regulations are found in the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act. Please be aware that Federal, State, and City accessibility standards will continue to change.

In addition to federal and state requirements for accessibility in new and existing housing and **S.M.A.R.T. Housing** accessibility standards, the City has adopted the Building Code and the Visitability Ordinance.

#### Multi-Family Accessibility Standards

Multi-family site and building plans must be reviewed for compliance with accessibility, transit-oriented, and green building standards prior to submittal for building permit approval.

The Building Code creates accessibility standards for multi-family apartments and common facilities on the site. **S.M.A.R.T. Housing creates additional standards.** Together, these standards include the following regulations:

- 25% of all multi-family units must be ground-floor-level units
- All ground-floor-level units must be adaptable
- 10% of all multi-family units must be accessible
- A certain number of parking spaces must be accessible
- An accessible route is required to connect the accessible parking spaces to the accessible and adaptable first floor units and the common areas
- Accessible entrances, doorways, and bathrooms are required in the accessible first floor units;
- Safe refuge areas are required for accessible units that are located above the first floor (particularly in buildings with elevators).

Multi-family design professionals are encouraged to consider using HUD's Fair Housing Act Design Manual or the 2001 supplement to the 2000 International Building Code as guides in preparing plans. Consult S.M.A.R.T. Housing to discuss which standards would apply to your development.

*The Visitability Ordinance (Single-family, Duplex, Triplex)*

The Visitability Ordinance (981007-A) establishes the following standards for new single-family homes, duplexes, or triplexes that receive federal, state, or city assistance. **All S.M.A.R.T. Housing single-family homes, duplexes, and triplexes must meet these standards:**

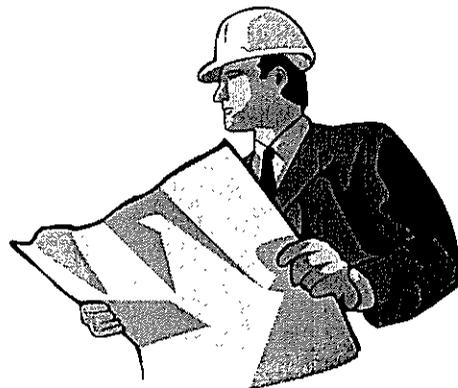
1. An accessible entrance door with a minimum width of 32 inches of net clear opening is required. The door must be served by a ramp or a no-step entrance, and must connect to an accessible route (such as a garage, carport, driveway, or sidewalk).
2. Interior doorways on the first floor must have a minimum net clear opening of 30 inches (except doors leading into closets less than 15 square feet in area).
3. Lever handle hardware on first floor interior doors and the accessible entrance door are required.
4. Hallways are to be at least 36" wide and have ramped or beveled changes at each door threshold
5. Bathroom walls are to be reinforced with wood blocking that is two inches by six inches or larger in nominal dimension, and the center line of the blocking must be 34 inches from the bathroom floor.
6. Each light switch, thermostat, or plug receptacle located on the first floor or outside the building must be at least 18 inches but not more than 42 inches above the floor.
7. Electrical panels located on the first floor inside the building must be no higher than 42" above the ground and no less than 18" above the ground and be adjacent to an accessible route.

*Communicate These Standards to Your Contractor!*

**It is your responsibility to bring these standards to the attention of your contractor.** Some contractors are unaware of **Federal accessibility standards that apply to any multi-family construction**, or the additional standards that apply to projects that receive federal funds. Most contractors are not familiar with the City's Visitability Ordinance, which applies to new single-family homes, duplexes, or triplexes that receive federal, state, or city assistance (including **S.M.A.R.T. Housing**).

**Please make your contractor aware of the accessibility standards on the construction plans.**

For more information about accessibility standards, please contact Stuart Hersh at (512) 974-3154, [stuart.hersh@ci.austin.tx.us](mailto:stuart.hersh@ci.austin.tx.us); or Gina Copic at (512) 974-3180, [regina.copic@ci.austin.tx.us](mailto:regina.copic@ci.austin.tx.us) .



## Transit-Oriented

### REQUIRED for single-family residences and duplexes:

1. Coordination with Capital Metro – The proposed project must be within ¼ mile of an existing or proposed Capital Metro transit route with peak hour service every 20 minutes or less. The route must be in place by the time the development is completed (final certificate of occupancy issued).
2. Porches – Covered porches should be at least four feet deep and should be included on the street side of the house. While four feet is the minimum *required* depth, a porch area of 100 square feet with a depth of 6 feet is *recommended*.
3. Street Orientation – The front door of the house must face the street, unless the location of the front door must be changed to meet visitability requirements. For duplexes, at least one front door should face the street.

### RECOMMENDED for single-family residences and duplexes:

1. Transit Amenities – For single-family subdivisions, Capital Metro bus stops serving the development should include shelters. Where new sidewalks are installed along a transit route, the applicant should coordinate with Capital Metro to include space(s) appropriate for a future bus shelter. Where roads on transit routes are installed, widened, or improved, the applicant should coordinate with Capital Metro to produce a transit improvements plan.
2. Sidewalks and Landscaping – Sidewalks built in the public right-of-way should be separated from the curb by a planting strip. The strip should include a combination of low-water native plants and shade trees. The sidewalk should be connected to a sidewalk on private property that leads directly to the front door of the house.

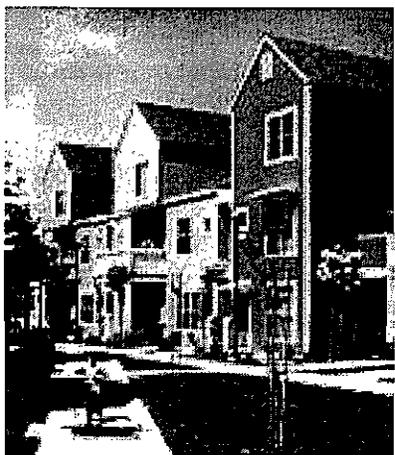


*Examples of different styles of front porches (4' minimum required depth, 100 square feet recommended). The photo on the left includes a planting strip between the sidewalk and street (recommended feature).*

**REQUIRED for multi-family developments:**

1. Coordination with Capital Metro – The proposed project must be within ¼ mile of a Capital Metro transit route with peak hour service every 20 minutes or less. The route must be in place by the time the development is completed (final certificate of occupancy issued).

2. Accessible routes to transit – Accessible sidewalks must connect the complex to nearby transit stops.



3. Site design – Internal parking areas and driveways should form a “network of interconnected streets” within the project to the greatest extent possible. Internal walkways should allow accessible travel throughout the complex.

4. Pedestrian and Vehicular Connections – Unless site characteristics or neighborhood concerns dictate otherwise, the project should provide direct access by the shortest route possible to adjacent destination development such as retail, civic, or recreational uses and should connect to all adjacent streets, sidewalks, trails, and greenbelts.

5. “Eyes on the street” – For those units that adjoin a street, at least one window per unit should face the street.

**RECOMMENDED for multi-family developments:**

1. Transit Amenities – For multi-family developments, Capital Metro bus stops serving the development should include shelters. Where new sidewalks are installed along a transit route, the applicant should coordinate with Capital Metro to include space(s) appropriate for a future bus shelter. Where roads are installed, widened, or improved, the applicant should coordinate with Capital Metro to produce a transit improvements plan.



2. Street Presence – Buildings should be oriented to neighborhood streets and sidewalks (the buildings should not “turn their backs” to the street), and buildings should be constructed to be as near to the street as site development standards allow.

3. External Access – There should be vehicular connections to the street at least every 600 feet and pedestrian access at least every 300 feet.

4. Wide Sidewalks – Public sidewalks should be at least six feet wide, and eight feet wide where possible.

5. Location of Parking – Unless site characteristics dictate otherwise, off-street parking should not be located along the external boundaries of the project. On-street parking should be included where possible.

6. Active Building Façade – The street side of the buildings should include active design elements such as doorways, windows, porches, balconies, stoops, weather protection features such as awnings and overhangs, and other similar features. The façade of the building on the street-side should be divided into traditional 30-foot increments to provide human scale.
7. Landscaping, Benches, and Lighting – The project should incorporate landscaping (a minimum of three inch caliper native shade trees, spaced 30’ on center, along all walkways in the complex), benches, and pedestrian scale lighting that promotes a pedestrian-friendly environment.
8. Mixed Uses – The project should incorporate appropriately scaled commercial uses for the convenience of local residents, where possible.
9. Common Space – The project should provide open public space with recreational facilities and public art.
10. Fencing – Solid fencing should not separate the buildings from the street. Open fencing or fencing less than four feet in height is acceptable. Gating the parking/entry area is acceptable, provided that residents in wheelchairs can enter and exit the complex.



*Example of a multi-family development that includes many features recommended above:*

- ✓ Street presence
- ✓ Wide sidewalks
- ✓ On-street parking
- ✓ Active façade
- ✓ Landscaping
- ✓ Mixed uses

*Example of a townhouse-style development that includes open space for residents: a community garden and a children’s’ play area.*





### Standards for Projects Using HB 1704

Projects claiming HB 1704 exemptions should be reviewed by the 1704 Committee to confirm the 1704 status of the subject property. This determination should be complete before the pre-submittal meeting with S.M.A.R.T. Housing staff, development review staff, and the applicant. For more information about the 1704 Committee, contact Jennifer Mayer at (512) 974-2245 or [jennifer.mayer@ci.austin.tx.us](mailto:jennifer.mayer@ci.austin.tx.us).

Applicants seeking certification for fee waivers and expedited review for S.M.A.R.T. Housing developments in the Drinking Water Protection Zone must receive City Council approval if they request either an environmental variance or 1704 exemption. S.M.A.R.T. Housing developments in the Drinking Water Protection Zone that do not require environmental variances or 1704 exemption may be approved administratively.

In the Desired Development Zone, S.M.A.R.T. Housing developments requiring environmental variances may be processed administratively if the variance is supported by the Environmental Officer, the Environmental Board, and the Planning Commission. Single-family S.M.A.R.T. Housing subdivisions may claim 1704 exemptions in the Desired Development Zone. Site plans requiring 1704 exemption will not receive certification unless they receive City Council approval.

Because the number of fee waivers are limited on an annual basis as are the resources available for expedited review, the Director of the Neighborhood Housing and Community Development Department will not support 1704 exemptions in the Drinking Water Protection Zone or 1704 exemptions for multi-family developments in the Desired Development Zone.

### Other Requirements

**Viable Land within City Limits:** Developers must have site control of land/lots located within the city limits of Austin. If zoning is not in place, the applicant must contact registered neighborhood associations and address neighborhood concerns prior to filing a zoning application. Projects must be served by existing City infrastructure and services that will not require additional capital expenditures by the City.

**Completed on Schedule:** Single-family units on infill lots receiving fee exemptions must be completed, sold, and occupied within 15 months of the execution of a contract with the City and/or AHFC. Multi-family units and single-family units in new subdivisions must be completed, sold, and/or occupied within 24 months.

## **S.M.A.R.T. Housing Benefits for Builders**

### **Fee Waivers**

The City of Austin waives fees for developments that the Department of Neighborhood Housing and Community Development has certified as **S.M.A.R.T. Housing**. Fee waivers are limited and will be allocated on a first-come, first-serve basis. **See the next page for a complete list of fees waived for developments that meet S.M.A.R.T. Housing standards.**

**How much does the average project receive in fee waivers?** While the total fees waived will vary depending on the project (e.g. whether a rezoning is required), fees generally add up to:

Single-family infill: For a 1200 square foot single-family home on an infill lot, permit and water/wastewater capital recovery fees waived would total about \$1300.

Single-family subdivisions: The same fees as single-family infill, with the addition of about \$500 per lot in subdivisions that have not yet been approved and accepted for maintenance.

Multi-family: For the first two years of the **S.M.A.R.T. Housing** program, waived fees have averaged approximately \$580 per unit.

**Please note that fee waivers are *not* available for:**

- Remodeling of existing residential units (waivers available for new construction only)
- Owners with outstanding Housing Code violations on units or projects on which they are affiliated with the owning entity as a sponsor, partner, or partial owner.
- Owners with outstanding violations on accessibility issues on previously completed units or projects where they are affiliated with the owning entity.

### **S.M.A.R.T. Housing Review**

Because **S.M.A.R.T. Housing** is a City priority, those developments that meet **S.M.A.R.T. Housing** standards are eligible for special **S.M.A.R.T. Housing** review, which is typically faster than the review time for conventional development projects. City staff will work with applicants to move projects through review and inspection as quickly and efficiently as possible.

However, the speed of this review period depends on the applicant's performance as well as staff's. Providing corrections, responding to comments, and ultimately securing an approval in a timely manner is a **shared responsibility of both staff and the applicant's design team**. **S.M.A.R.T. Housing** review will not be available if the applicant fails to respond in a timely manner to City review comments.

### **Advocacy**

**S.M.A.R.T. Housing** staff will assist you in resolving development-related issues with other City Departments. Staff is available to facilitate discussions and to find solutions.

**S.M.A.R.T. Housing Fees Eligible for Waiver**

On April 20, 2000 the Austin City Council adopted Ordinance No. 000420-77 creating the **S.M.A.R.T. Housing Policy** and authorizing the administrative authority to waive fees for **S.M.A.R.T. Housing** developments. Fees listed in the ordinance are:

<b>City Department</b>		<b>Fee Types</b>
<b>Water and Wastewater</b>		Capital Recovery (Impact) Fee
<b>Public Works</b>		Construction Inspection Fee
<b>Watershed Protection and Development Review</b>		Development Assessment Fee
		Traffic Impact Analysis Fee
		Traffic Impact Analysis Revision Fee
	<b>Zoning Fees</b>	Regular Zoning Fee
		Interim to Permanent Zoning Fee
		Miscellaneous Zoning Fee
		Zoning Verification Letter Fee
		Board of Adjustment Fee
		Managed Growth Agreement Fee
		Planned Development Area Fee
	<b>Subdivision Fees</b>	Preliminary Subdivision Fee
		Final Subdivision Fee
		Final Without Preliminary Subdivision Fee
		Miscellaneous Subdivision Fee
	<b>Site Plan Fees</b>	Consolidated Site Plan Fee
		Miscellaneous Site Plan Fee
		Site Plan Revision Fee
		Site Plan – Construction Element Fee
	<b>Building Plan Review, Permit, and Inspection Fees</b>	Building Review Plan Fee
		Building Permit Fee
		Electric Permit Fee
		Mechanical Permit Fee
		Plumbing Permit Fee
		Concrete Permit Fee
		Demolition Permit Fee
		Electric Service Inspection Fee
		Move House Onto Lot Fee
		Move House Onto City Right-of-Way Fee

## The S.M.A.R.T. Housing Process

### Process Overview

**For all projects,** to begin the S.M.A.R.T. Housing process, contact S.M.A.R.T. Housing staff to have a preliminary discussion about your project. Afterward, meet with Green Builder staff to secure conditional approval for your project. The next step is to submit a completed S.M.A.R.T. Housing application with all required attachments. If your application is approved, staff will provide a letter stating that your project has been certified for S.M.A.R.T. Housing and is eligible to receive fee waivers and expedited review, if the project continues to meet S.M.A.R.T. Housing standards. In most cases, staff meets with the applicant again to review the process and anticipate any possible issues.

**For single-family and duplex review,** the applicant submits a S.M.A.R.T. Housing residential checklist (and attachments) to S.M.A.R.T. Housing staff. Complete applications are forwarded to the Residential Review staff, who will request corrections as needed. Building permits are issued, construction begins. The applicant notifies Green Builder staff upon breaking ground. Prior to certificate of occupancy, the applicant must contact S.M.A.R.T. Housing staff to obtain a final inspection for Green Building and Visitability compliance.

**For multi-family site-plans and single-family subdivisions,** S.M.A.R.T. Housing staff will schedule a Pre-Submittal meeting between the applicant, the applicant's design team and City reviewers. At this meeting, staff and applicant establish the S.M.A.R.T. Housing review timeline (typically faster than review times for conventional projects), including the design team's response timeline. Next, the applicant submits plans to **S.M.A.R.T. Housing** staff for accessibility review, and revises plans as necessary.

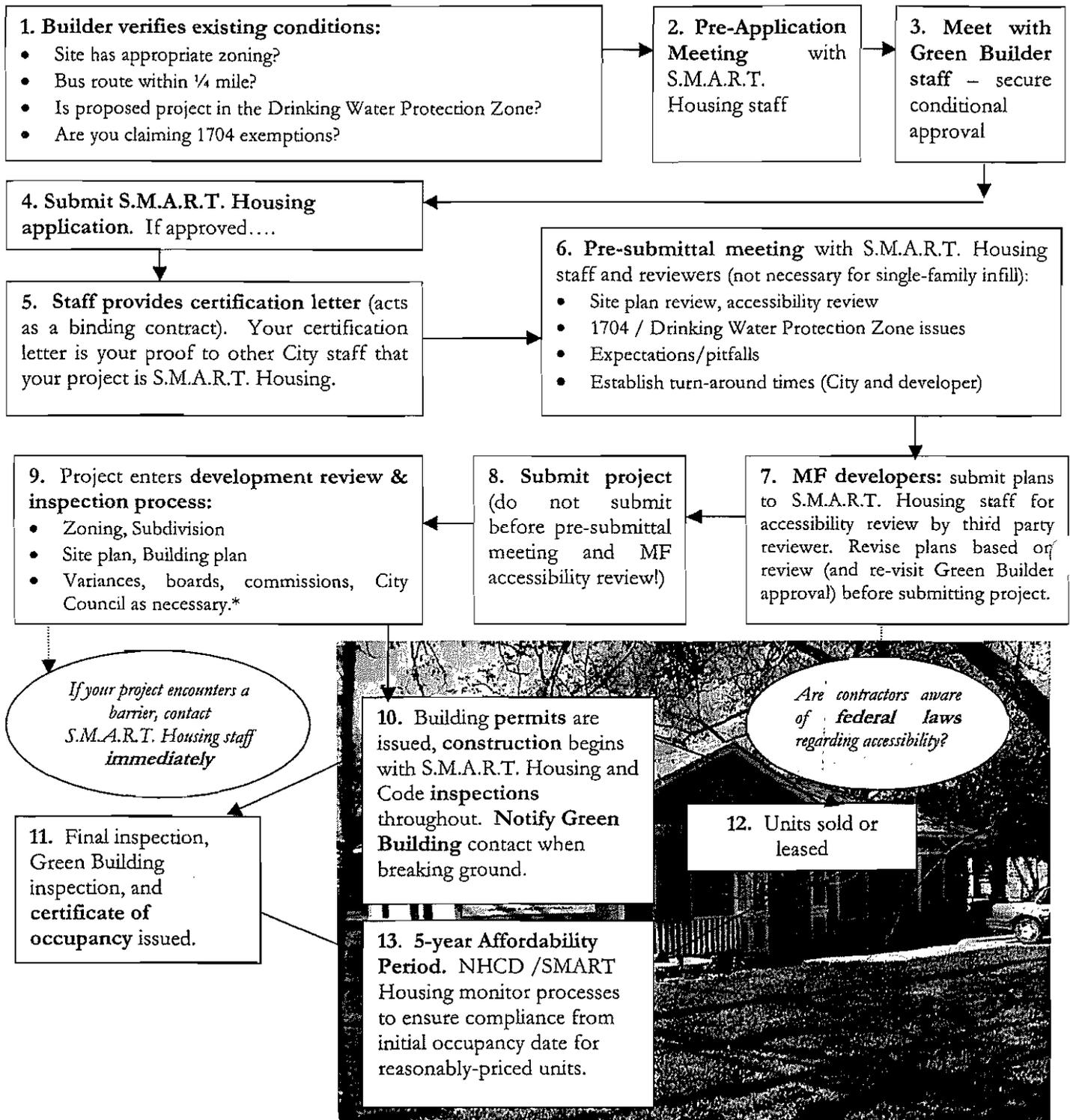
After the pre-submittal meeting and multi-family accessibility review, the applicant submits the project, and review process for subdivision, site plan, and building plan begins. City reviewers provide initial comments and the applicant returns comments within the time periods established during the pre-submittal meeting.

Building permits are issued, and construction begins. The applicant notifies Green Builder staff upon breaking ground. The project receives a final inspection for Green Building and either Visitability or Accessibility.

**For all projects,** at the time a home or rental unit is ready for occupancy, the S.M.A.R.T. Housing applicant must demonstrate compliance with "reasonably-priced" criteria. S.M.A.R.T. Housing staff will review income verification data for the eligible families at the initial stage of occupancy and throughout the five-year affordability period following initial occupancy. Failure to meet the income eligibility standards throughout the affordability period will result in the applicant being required to return fee waivers and possibly face a zoning rollback if a zoning change was associated with this S.M.A.R.T. Housing application.

Depending on the project's circumstances, other processes may be necessary, such as annexation, zoning, or variances. Applicants are encouraged to select land that is already zoned correctly, and to design projects in such a way as to avoid the need for variances.

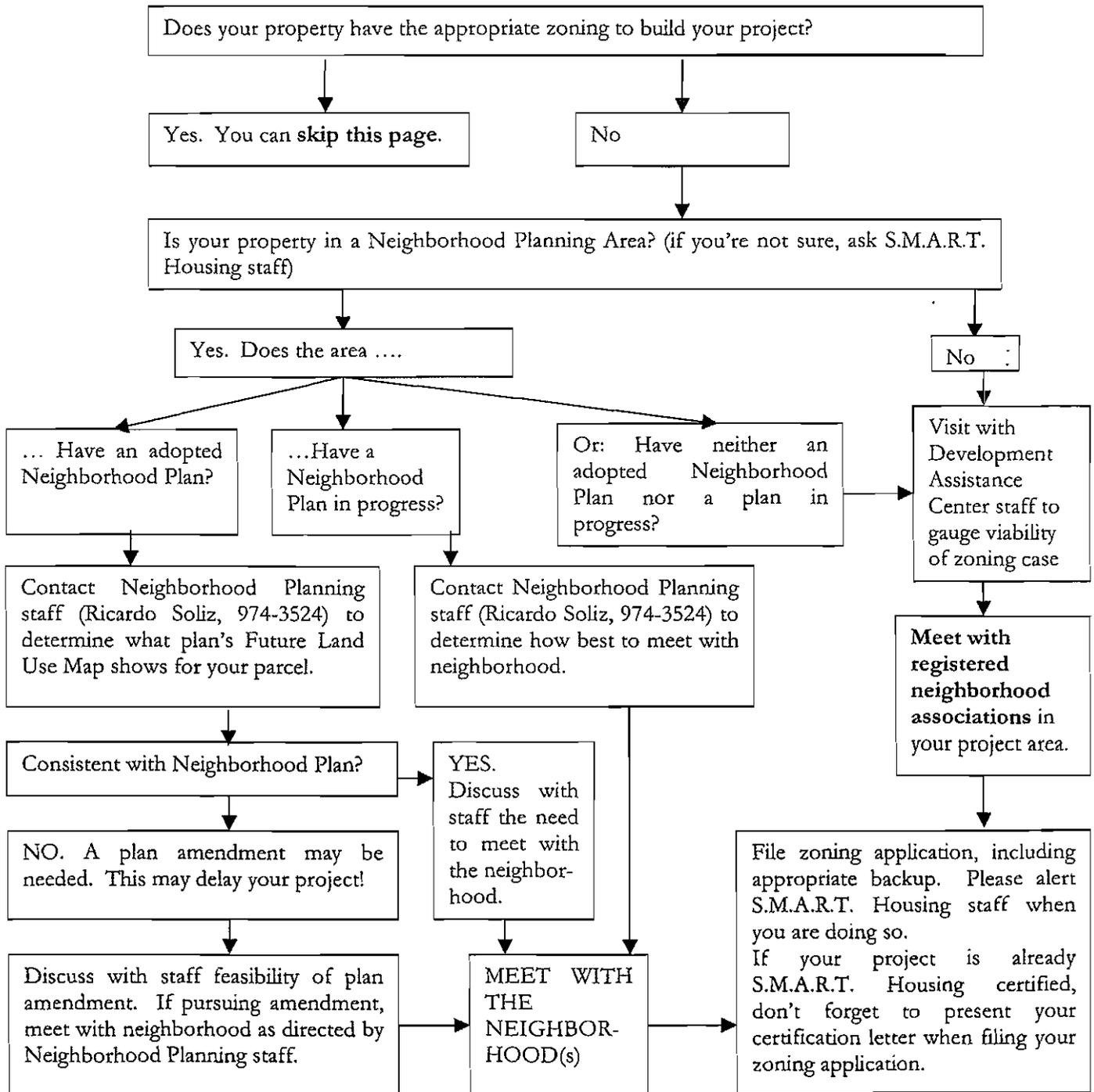
### S.M.A.R.T. Housing Process Flowchart



*\* Staff's experience has been that variances can be a costly delay to projects. Applicants are strongly encouraged to design projects in such a way as to **avoid the need for variances.***

### S.M.A.R.T. Housing Zoning Process

**S.M.A.R.T. Housing** staff will authorize the waiver of the zoning application fee and the 45-day processing of the zoning change request only after verifying that the applicant has responded to the legitimate concerns of the neighborhood residents. An applicant who proceeds without **S.M.A.R.T. Housing** staff authorization will not receive fee waivers for the zoning application or the 45-day processing.



## S.M.A.R.T. Housing Review and Building Permit Process

All new buildings must comply with all codes in effect on the day the building permit application was filed. Detailed building permit application information can be found at <http://www.cityofaustin.org/development>. City staff can assist you in determining the viability of your project: for single family and duplex development, contact the Residential Zoning Review staff at 974-2380. For multi-family development, contact the Permit and License Center at 974-2747.

### **S.M.A.R.T. Housing Single-Family Building Permits**

Participation in **S.M.A.R.T. Housing** provides the applicant with S.M.A.R.T. Housing review times (typically faster) and fee waivers. To achieve the special S.M.A.R.T. Housing review time, the builder must submit a completed single-family building permit application directly to S.M.A.R.T. Housing staff at the Department of Neighborhood Housing and Community Development (505 Barton Springs Rd, Suite 600) for completeness check and sign off. Requirements for S.M.A.R.T. Housing single-family building permit review are as follows:

1. The **S.M.A.R.T. Housing** Residential Completeness Checklist should be attached to your building permit application and plans. The Checklist should be completed and signed.
2. A copy of the **S.M.A.R.T. Housing** certification letter should be attached to the Checklist.
3. The following standard notes for compliance with the Visitability Ordinance must be placed on one page of the building plans you submit with your application for building permit:
  - ◆ An accessible entrance door with a minimum width of 32 inches of net clear opening is required. The door must be served by a ramp or a no-step entrance, and must connect to an accessible route (such as a garage, carport, driveway, or sidewalk).
  - ◆ Interior doorways on the first floor must have a minimum net clear opening of 30 inches (except doors leading into closets less than 15 square feet in area).
  - ◆ Lever handle hardware on first floor interior doors and the accessible entrance door are required.
  - ◆ Hallways are to be at least 36" wide and have ramped or beveled changes at each door threshold.
  - ◆ Bathroom walls are to be reinforced with wood blocking that is two inches by six inches or larger in nominal dimension, and the center line of the blocking must be 34 inches from the bathroom floor.
  - ◆ Each light switch, thermostat, or plug receptacle located on the first floor or outside the building must be at least 18 inches but not more than 42 inches above the floor.
  - ◆ Electrical panels located on the first floor inside the building must be no higher than 42" above the ground and no less than 18" above the ground and be adjacent to an accessible route.
4. Austin Energy should have reviewed and approved your plans for compliance with Green Building standards. They will perform site inspections to verify that the home meets the standards of your approved plans.
5. Your plans should demonstrate compliance with the Transit-Oriented features of **S.M.A.R.T. Housing**, and you must verify that Capital Metro will have a transit route within ¼ mile of your location prior to occupancy of your home(s).
6. Compliance with Green Building and the Visitability Ordinance will be required prior to receiving a certificate of occupancy.

Following these steps will allow the City to process your single-family permit application in an expedited manner.

## **S.M.A.R.T. Housing Multi-Family Development**

In **S.M.A.R.T. Housing**, a multi-family development that has received zoning approval may require subdivision, site plan, and building plan approval before building permits are issued. At the pre-submittal meeting with subdivision and site plan reviewers, the review team establishes the S.M.A.R.T. Housing review timeline and the design team response timeline. If City site plan or subdivision review is required within 14 working days, then the applicant is required to submit revised plans within 14 working days as well. If City staff is required to review corrected plans within 7 working days, then the design team is required to submit revisions to rejected plans within 7 working days. Failure to meet these deadlines can result in loss of the expedited review incentive.

For building plan review, City reviewers return comments on the original plans within seven working days. The City's building plan review team will not begin its review unless the building and site plans incorporate the review comments from Austin Energy's Green Building reviewer, **S.M.A.R.T. Housing's** accessibility reviewer, and the **S.M.A.R.T. Housing Guide's** transit-oriented requirements. The applicant's design team must submit corrected plans within seven working days of when the customer receives building plan review comments. City building plan reviewers will review corrected plans within two working days, and the design team is required to submit final corrections within two working days. Failure to meet these deadlines can result in loss of the special S.M.A.R.T. Housing review times.

Because your proposed **S.M.A.R.T. Housing** multi-family development has been certified to receive **S.M.A.R.T. Housing** incentives, please ensure that your design team understands its responsibility to respond in a timely manner.

## 2. BUILDING IN AUSTIN: BUILDING STANDARDS AND PROCESS

### Overview

When a development is funded only with private dollars, the owner and contractors are required to comply with development standards based upon whether the development is a new home or a multi-family building site; an addition; a relocated building; or a building that is repaired, rehabilitated or replaced. For developments located within the city, these development standards include land use regulations, building codes, and utility connection requirements.

**Land use regulations** prohibit construction if the zoning is not appropriate. A zoning change approved by the city council is required before plans can be approved, permits issued, and construction activity begins. If the site is in certain flood-prone areas, the housing may be required to be elevated, or not built at all unless the city council grants a variance. If the site is over a former landfill, special testing and design review and approval by a state agency may be required before the city approves the development plans. Subdivision regulations may establish minimum lot sizes, minimum house size, setbacks, height restrictions, use restrictions, or sidewalk location requirements that are different than those found elsewhere in the Land Development Code. These are not the only land-use issues that may surface, but they may delay a project until they are addressed.

**Building codes** establish minimum standards for new and existing buildings that may be used for housing. In single-family housing, these include the structural, electrical, mechanical (heating and air-conditioning), plumbing, exiting, and energy conservation features of the building. In multi-family housing, accessibility for mobility-impaired persons, fire-resistance and early-warning systems become part of plan preparation, reviews construction, and inspection processes.

**Utility connection requirements** link the land use and building code regulations to safety requirements for supplying electricity, natural gas, water, and sewer service when a building is ready for occupancy. The City of Austin provides electrical, water and wastewater services to most people who live inside the city limits; however, some residents receive service from other providers or on-site systems. The owner and contractor need to be aware of the service provider to the property and follow the regulations that may be unique to that particular utility.

**Review Requirements for Historic Buildings and Historic Districts:** The city reviews proposed demolitions, relocations, alterations or modifications, and new construction of buildings in historic districts and of those buildings designated as historic landmarks or if the building to be relocated or demolished is listed on a survey of historical resources. The City Historic Preservation Officer reviews all proposed demolitions, relocations to determine if the affected buildings are potential historic landmarks. If these are existing or potential landmarks, the Historic Landmark Commission, the Planning Commission, and the City Council may review the proposal as well.

**Demolition:** The City of Austin requires that you or your demolition contractor secure a permit before the demolition may begin. You may want to verify whether you can build your project before you tear down a building that cannot be replaced. For more information contact the Development Assistance Center at 974-6370 or visit the web site at: <http://www.cityofaustin.org/development>.

Before beginning, ensure that the building to be demolished is not a historic building or in a historic district. To find out the zoning on any property in the City of Austin or to determine if the property is in a historic district, contact the Map Sales Division at (512) 974-2213, -3347, or -2297.

## **All Building Projects: Before You Begin...**

If you have a set of plans for your project, City reviewers will assist you in determining the viability of your project.

### **How do I figure out whether the lot is properly zoned for the house I want to build?**

To find out the zoning on any property in the City of Austin, you can contact the Map Sales Division at (512) 974-2213, -3347, or -2297.

The basic questions to answer are:

- Is my lot in a flood plain or a Critical Water Quality Zone?
- Does the zoning on the lot allow for the proposed development or would I need a zoning change?
- Can I build development so that it will be far enough away from the front property, the rear property line; the side yards, easements, and protected trees?
- Can I build this house within the building coverage limits and impervious cover limits established in my zoning district?
- Can my home meet the height limitations of the zoning district?
- Does my lot meet the minimum width and area requirements?
- Is there a Board of Adjustment decision that governs construction on this site?
- Is the lot on which I plan to build the home historically significant, located in a historic district, listed in a city historic inventory, or recognized as historically significant by the state or federal government?

Other issues to consider are that there may be notes on your subdivision plat, a restrictive covenant, or your deed restrictions that provide additional limitations on how you can use your property. A title company or real estate appraiser can secure this information for you, and it is important to know this before you submit your plans for City review.

Other requirements are triggered if the building is located in the 100-year flood plain or the 25-year flood plain. The Development Assistance Center will assist you in determining your options if you are in a flood plain. You can check to see where the flood plain is by looking at the Internet Web site for the Development Process <http://www.cityofaustin.org/development> and clicking on "GIS – Geographic Information."

Most lots have standard legal descriptions such as Lot 1, Block 2, Fred's Subdivision. Others are described with less conventional descriptions that will raise questions about whether the tract complies with subdivision standards. The Development Assistance Center determines whether the lot or tract was legally subdivided or "grandfathered" or whether you would need to apply for and receive a subdivision approval administratively or from the Planning Commission before you could place any improvements on the lot. Like zoning, if a subdivision approval is needed, it must be obtained prior to the issuance of any building permits.

## **Federal and State Standards**

In addition to City of Austin standards, federal and state agencies enforce additional requirements. Some of these standards govern all housing, while others are limited to specific types of development. Federal and state agencies may require compliance with additional environmental standards if federal or state funding is used.

The City of Austin has established purchasing, contract administration, and monitoring systems that include compliance with applicable regulations as well as standards of performance included in specific contracts. Regulatory requirements for publicly funded developments may include compliance with standards in the following areas: labor standards; payment for relocation of current residents; fair housing and equal opportunity; accessibility for persons with disabilities; property maintenance; historic preservation; environmental protection; and applicant eligibility based upon income. The City offers training for contractors and applicants on regulatory and performance requirements. This training is designed to eliminate problems that have arisen in the past when owners, contractors or applicants were not fully aware of their responsibilities. The City of Austin monitors compliance with all applicable regulations.

### **Labor Standards**

Labor standards include federal and state workplace safety standards as well as provisions for minimum wages and other conditions of employment. Different funding sources bring with them specific labor standards, and these labor standards may be triggered when a development builds or rehabilitates a certain number of units or when a certain amount of federal funding is provided for the development. Contracts should include language that clarifies which labor standards govern a particular project, and provide details about when the owner or contractor will have to submit reports that establish compliance with the applicable labor standards.

### **Acquisition and Relocation Standards**

Federal regulations establish the basis for fair treatment of residents who may be displaced or relocated when a property is bought, sold, or rehabilitated with federal funds. These standards supplement the City of Austin policies that may govern these activities if city funds are used in this activity as well.

### **Fair Housing and Equal Opportunity Standards**

Federal regulations allow all people to have access to available services and assistance regardless of their race, color, religion, national origin, age or sex. The City of Austin investigates complaints of discrimination and takes appropriate action when violations are identified.

### **Environmental Protection**

If the proposed **S.M.A.R.T. Housing** development receives federal assistance, the applicant must secure environmental approvals from both the City review staff and the agency supplying the funding prior to building permit issuance. These reviews may include review for compliance with flood plain regulations, redevelopment standards for former landfills, setbacks from pipelines and easements, noise mitigation and other environmental standards.

### 3. APPENDIX

#### **S.M.A.R.T. Housing Process Checklist**

- All Projects
- Read the **S.M.A.R.T. Housing** Guide. Will your project meet **S.M.A.R.T. Housing** standards?
  - Verify existing conditions:
    - Does the property have the zoning needed for your project?
    - Is the property within City limits? If not, talk to **S.M.A.R.T. Housing** staff about voluntary annexation process.
    - Is there a bus route within ¼ mile with peak hour service every 20 minutes or less?
    - Is the property in the Drinking Water Protection Zone?
    - Are you claiming HB 1704 exemptions? If so, have you met with the City's 1704 Committee?
  - Have a Pre-Application Meeting with **S.M.A.R.T. Housing** staff, to identify any major issues related to subdivision or site plan approval
  - Have a meeting with Green Builder staff and secure Conditional Approval.
  - Submit **S.M.A.R.T. Housing** fee waiver application.
  - City staff reviews the application for completeness and verifies whether a zoning change is required for the proposed development.
  - City staff will provide the applicant a Certification Letter stating that certain fees will be waived.
  - Have a post-certification meeting with **S.M.A.R.T. Housing** staff to discuss **S.M.A.R.T. Housing** process and identify any potential issues.
- Single-Family and Duplex
- Single-Family and Duplex Plan Review:** The applicant submits the following information to **S.M.A.R.T. Housing** staff for review and approval.
    - A completed **S.M.A.R.T. Housing** Residential Checklist.
    - All of the attachments listed in the **S.M.A.R.T. Housing** Residential Checklist
    - A copy of the **S.M.A.R.T. Housing** Certification Letter
    - A Green Building Conditional Approval from Austin Energy
    - Plan details demonstrating compliance with transit-oriented and visitability standards
  - When accepted, the application will be reviewed by City zoning staff, who will approve or reject **S.M.A.R.T. Housing** applications within two working days of receipt. Applicants are expected to submit all corrections within two working days after requested by zoning review staff. Corrected plans are reviewed within two working days, and the applicant must correct rejected plans within two working days. Applicant failure to respond in a timely and complete manner will result in the discontinuation of **S.M.A.R.T. Housing** review, and review times will revert to a conventional pace.
- Subdivisions and Multi-Family
- Subdivision and Site Plan Approval:** NHCD will schedule a Pre-Submittal Meeting between the applicant and City reviewers after the applicant has prepared conceptual plans and is preparing to enter completeness check stage of review. At this meeting, staff and applicant establish the review timeline, including the design team's response timeline.
  - (Multi-Family only): Submit plans to **S.M.A.R.T. Housing** staff for accessibility review. Revise plans based on review (and re-confirm Green Builder approval) before submitting project.
  - Submit project (not before pre-submittal meeting and multi-family accessibility review!). Development review & inspection process begins.
  - Variances, boards, commissions, Council as necessary. Applicants are strongly encouraged to design projects in such a way as to avoid the need for variances.

Subdivisions and Multi-Family

- If the applicant has not secured zoning, the subdivision or site plan approval must wait until the zoning is approved and the plans conform to any conditional overlays that may have been attached to the zoning approval.
- Respond to the review comments for **S.M.A.R.T. Housing** accessibility, transit-oriented design, and Green Building.
- City reviewers provide initial comments within 14 working days, and the applicant is expected to resubmit fully corrected plans with 14 working days. The City will review corrected plans within seven working days, and the applicant must resubmit final corrections within seven working days. The following circumstances will take the application out of the fast track review process, until issues are resolved:
  - A pending request for a zoning or parking variance before the Board of Adjustment
  - A request for an environmental variance not supported by the City's Environmental Officer
  - A pending request for a conditional use permit, compatibility waiver or environmental variance before the Planning Commission or the Zoning and Platting Commission.
  - A claim of House Bill 1704 exemption for the development.
  - A Service Extension Request to the Water and Wastewater Utility.
  - Failure of the applicant to respond timely and completely to the comments generated by City reviewers, or to comments related to **S.M.A.R.T. Housing** accessibility or transit-oriented review.
- Building Plan Review (Multi-family only):** Building plan reviewers return comments to the applicant within seven working days of initial submittal. The applicant is expected to resubmit corrected plans within seven working days. The corrected plans will be reviewed within two working days, and additional corrections must be resubmitted to City reviewers within two working days.

All Projects

- Building permits are issued, construction begins.
- If your project encounters a barrier, contact **S.M.A.R.T. Housing** staff immediately.
- Ensure that contractors build from approved plans, especially regarding accessibility/visitability standards. For multi-family, some accessibility standards are **federal law for all projects**.
- Notify Green Building staff when breaking ground.
- Notify **S.M.A.R.T. Housing** staff to request accessibility/visitability and transit-oriented inspection.
- Notify Green Building staff when project complete.
- Final inspection.
- Certificate of Occupancy issued.
- Lease or sell units.
- Five-year affordability period begins. At the time a home or rental unit is ready for occupancy, the S.M.A.R.T. Housing applicant must demonstrate compliance with "reasonably-priced" criteria. Applicants must not only make their income verification data available for City staff review at the initial stage of occupancy, but also throughout the five-year affordability period after initial occupancy. Applicant failure to meet the income eligibility standards throughout the affordability period will result in the applicant being required to return fee waivers and possibly face a zoning rollback if a zoning change was associated with this S.M.A.R.T. Housing application.

**S.M.A.R.T. Housing Application for Certification**

**DEPARTMENT OF NEIGHBORHOOD HOUSING AND COMMUNITY  
DEVELOPMENT  
APPLICATION FOR EXEMPTION FROM  
PAYMENT OF CAPITAL RECOVERY FEE,  
DEVELOPMENT REVIEW AND INSPECTION FEES  
AND CERTAIN SUBDIVISION CONSTRUCTION INSPECTION FEES**

I, the undersigned duly authorized representative of \_\_\_\_\_ (the "Applicant"), the owner of the proposed residential development described in the **S.M.A.R.T. Housing** Application, do hereby make application to the Neighborhood Housing and Community Development Office (NHCD) as administrator of the City's **S.M.A.R.T. Housing** Program in accordance with the program guidelines for \_\_\_\_\_ residential units to be exempted from the payment of the Capital Recovery Fees and other available fee waivers, and I do hereby declare and represent as follows:

The applicant intends to construct \_\_\_\_\_ Single-family homes to be sold to qualified homebuyers or to construct and operate a \_\_\_\_\_ unit Multi-family rental residential development (the "Development") to be located within the City of Austin, Texas, and desires that the City exempt the development from the payment of Capital Recovery Fees and other available fees in accordance with the **S.M.A.R.T. Housing** Resolution.

The Applicant has received a copy of the **S.M.A.R.T. Housing** Guide and having read this document, hereby agrees to comply with all terms of the rules including meeting the minimum Green Building standards, the Accessibility and Visitability standards required by the **S.M.A.R.T. Housing** Resolution, and the Transit-Oriented standards in the **S.M.A.R.T. Housing** Guide.

The Applicant has submitted herewith a completed copy of the **S.M.A.R.T. Housing** Application. To the best of the Applicant's knowledge, the information contained therein is true and correct.

The Applicant, if awarded the exemptions, hereby agrees to execute a contract with NHCD for the receipt of the exemptions. The Contract will contain such provisions as are necessary to carry out the requirements of the Programmatic exemption included in the Land Development Code.

Before issuance of the Certificate of Exemption, the Applicant will execute a note or surety bond, payable to NHCD in the amount of the number of exemptions granted multiplied by the fees required for the particular project and a Deed of Trust and/or restrictive covenant as specified by the Ordinance sufficient to assure that any designated reasonably priced Unit receiving the exemption will be occupied by an eligible family with income at 80 percent or below the Median Family Income (MFI) and requiring an affordability period of at least five years. If the unit is not occupied timely of execution of the note, the Applicant will pay the required Capital Recovery Fee and other required fees and forward this payment to the Neighborhood Housing and Community Development Office (NHCD) for repayment to the respective City departments due the fees.

WITNESS MY HAND THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

(NAME OF APPLICANT)

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

## S.M.A.R.T. Housing Application for Certification

### APPLICANT AND DEVELOPMENT INFORMATION

1. Name and contact information for the Applicant; i.e., the entity that currently has site control and will build the units for which exemption from payment of Capital Recovery Fees; development review and inspection fees; and certain subdivision construction inspection fees are requested (referred to hereinafter as the "Development").

Name:	Telephone: (office) (mobile)
Organization:	Fax:
Address and Zip:	Email:

2. Form of Organization of the Applicant:

Corporation     
  Limited Partnership     
  General Partnership  
 Sole Proprietor     
  501(c)3 Nonprofit Corporation

3. If the Applicant is a corporation, identify its officers and indicate their titles. If the Applicant is a partnership, identify its general partner or general partners (include occupation, title, address and telephone number).

4. Contact information for the representative of the Applicant with whom staff should communicate.

Name:	Telephone: (office) (mobile)
Organization:	Fax:
Address and Zip:	Email:

5. List of street addresses and/or description of the Development site (**Please attach** a legal description of the Development and, if a single-family project, a list of the lots and addresses).

(Attachment No. 1: Legal description and list of lots and addresses).

6. Has the City of Austin accepted the subdivision for maintenance and can a building permit be secured?      Yes       No
7. Does the project have site plan approval?      Yes       No
8. Will the subdivision be developed in phases? Yes  No  If so, how many lots per phase? \_\_\_\_\_

9. What is the current zoning of the property? \_\_\_\_\_  
If a rezoning is required, what zoning will be proposed? \_\_\_\_\_
10. If the Applicant presently owns the Development site, indicate: **(Include copy of Title Commitment, Escrow Contract or other document sufficient to show site control).** If an option, what is the option expiration date? \_\_\_\_\_

(Attachment No. 2: Proof of Site control such as contract, option, deed, dedicated plat, etc.)

11. If the applicant does not presently own the Development site, please describe any relationship that exists by virtue of common control or ownership between the Applicant and the present owner of the Development site. If none, please write "none."

\_\_\_\_\_

12. Estimated date to begin building construction: \_\_\_\_\_

13. Estimated date of completion: \_\_\_\_\_

14. **Please attach** a map or diagram indicating the Development's proximity to public transportation, places of employment, public parks, libraries, EMS/fire station or police substations, community centers, schools, flood plains, railroad tracks, or former landfill locations. **(A photocopied map with locations highlighted is sufficient)**

(Attachment No. 3: Availability of Infrastructure: Site map with proximity to items listed above)

15. Describe any additional facilities to be included in the Development such as parking, laundry, office or recreational facilities.

16. Indicate which of the following, if any, tenants/owners will be required to pay on an individual basis.

\_\_\_\_\_ Electricity    \_\_\_\_\_ Water and Sewer    \_\_\_\_\_ Garbage Pickup    \_\_\_\_\_ Gas

17. **Attach** a summary of prior development experience of the applicant or its principals, indicating date of project, size of project, type of project, and location of project. If a nonprofit, include name and experience of contractor who will build the units.

(Attachment No. 4: Experience and/or track record of developer – may be omitted if applicant has previously received exemptions under this program)

18. Indicate any subsidy, loan guarantee, Bond Financing, Issuer of Bonds, Low Income Housing Tax Credit, down payment assistance, or other subsidy for which the Applicant has received a commitment, has made, or intends to make, application with respect to the Development. If none, please write "none."

Indicate percentage and number of units of the project targeted to moderate income (families with income 80 percent of MFI or below), very low income (families with incomes at 50 percent or below MFI). If some or all units will be reserved for persons with special needs, and/or Section 8 families, please note this below.

\_\_\_ % of the units will be sold or rented to families with income at \_\_\_ % MFI or below  
 \_\_\_ % of the units will be sold or rented to families with income at \_\_\_ % MFI or below  
 \_\_\_ % of the units will be sold or rented to families with income at \_\_\_ % MFI or below

19. Indicate if your organization is a Community Based Development Organization (CBDO), Community Housing Development Organization (CHDO) or other nonprofit.

20. Indicate the number of units, type (number of bedrooms), approximately size (square footage), and projected rents, or in the case of single family homes, projected selling price of the units. **If necessary, attach additional pages.**

(Attachment No. 5: Details of the development)

\_\_\_\_\_ Number of Houses or Units with \_\_\_\_\_ bedrooms, \_\_\_\_\_ baths, \_\_\_\_\_ sq. ft. of living area

Land/Lot Cost:	Construction Cost:
Selling Price:	Monthly Rental (for rental developments):
Selling Price per Square Foot:	Monthly Rental per Square Foot:

For Single Family, will the development be:

site-built, or  manufactured homes, manufactured by \_\_\_\_\_ company  
 (note: manufactured homes for single-family development must be installed on **permanent foundations**)

21. Are you considering applying for gap financing from NHCD/AHFC to complete your development?  
**Note: Some NHCD/AHFC federal funding sources have environmental, labor, and monitoring requirements beyond S.M.A.R.T. Housing requirements.**  Yes  No

If yes, applicant must also complete and submit appropriate supplemental financing application.

Applicant hereby submits this completed Application for Fee Exemptions Questionnaire with the required attachments to Neighborhood Housing and Community Development for consideration.

Submitted this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
 Applicant's Signature

- Enclosures:
- Attachment No. 1 – Legal Description and List of lots and addresses
  - Attachment No. 2 – Proof of site control
  - Attachment No. 3 – Availability of infrastructure
  - Attachment No. 4 – Experience and track record of developer/contractor (may be omitted if Applicant has previously received exemptions under the program)
  - Attachment No. 5 – Details of the Development

## S.M.A.R.T. Housing Residential Completeness Check

**Address:** \_\_\_\_\_

**Name of development/S.M.A.R.T. Housing Applicant:** \_\_\_\_\_

**Neighborhood Planning Area (if applicable):** \_\_\_\_\_

**Zoning District for this site is:** \_\_\_\_\_

	<u>Required</u>	<u>Proposed</u>
<b>Setbacks:</b>		
• Front yard	_____	_____
• Rear yard	_____	_____
• Interior side yard	_____	_____
• Street side yard, if applicable	_____	_____
Building coverage limit	_____	_____
Impervious coverage limit	_____	_____

**The following items are included in this submittal:**

- \_\_\_ Completed residential application \_\_\_\_\_ :
- \_\_\_ Copy of S.M.A.R.T. Housing Certification Letter for the development
- \_\_\_ Visitability Standards appear on one page of the building plans
- \_\_\_ Full legal description (including amended or resubdivision, section and phase number)
- \_\_\_ One original plot plan and 2 copies (no reduced or faxed copies) drawn to engineer's scale showing entire lot dimensions and dimensions of all proposed buildings. Pages no larger than 8 ½ x 14.
- \_\_\_ Plot plan shows decks, balconies, exterior stairs, bay windows, overhangs, required sidewalks, all easements (as required by subdivision plat); and
  - Front, street side yard, interior side yard, rear yard setbacks
  - Location of storm sewer inlets (or note if none within 10' of side property lines)
  - Water meter locations
  - Location of manholes, transformers, and pull boxes
- \_\_\_ Floor plans match plot plan.
- \_\_\_ Elevations showing height dimensions of front, side, and rear.
- \_\_\_ Copies of any variances granted, easement releases, or any other approvals granted by City Boards, Commissions, or Council.
- \_\_\_ Septic system permit (if applicable), or waiver form with a copy of the Health Dept. application.
- \_\_\_ Documentation of a joint access agreement (if required to satisfy access requirements).

Signature of owner/agent		Date
Forwarded to Zoning Review by S.M.A.R.T. Housing	Time	Date

The AHFC and the City of Austin are committed to compliance with the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973, as amended. Reasonable modifications and equal access to communications will be provided upon request. Please call (512) 974-3100 (voice) or Relay Texas at 1-800-735-2989 (TDD) for assistance.

The AHFC and the City of Austin do not discriminate on the basis of disability in the admission, access to, treatment, or employment in their programs and activities. Dolores Gonzalez has been designated as the City's Section 504/ADA Coordinator. Her office is located at 206 East 9th Street, 14th Floor. If you have any questions or complaints regarding your Section 504/ADA rights, please call Dolores Gonzalez at (512) 974-3256 (Voice) or (512) 974-2445 (TTY).

**This publication is available in alternative formats. Please call (512) 974-3100 (Voice) or Relay Texas at 1-800-735-2989 (TDD) for assistance.**



Domain/900:  
copy to  
city clerk  
4-14-04

**Contract Reference Cover Sheet**

<i>Responsible Department:</i>	Law Department
<i>Contact person in your office:</i>	David Lloyd
<i>Address:</i>	114 W 7 <sup>th</sup> Street, 2 <sup>nd</sup> Floor, Austin, TX 78701
<i>E-mail:</i>	David.lloyd@ci.austin.tx.us
<i>Telephone:</i>	(512) 974-2918
<i>Project Name &amp; Description:</i>	First Amendment to City of Austin / Endeavor Real Estate Group Chapter 380 Economic Development Agreement
<i>Contractor/Vendor/Party:</i>	EGP Management, L.L.C. / City of Austin, Texas
<i>Contract Period:</i>	April 2, 2004 indefinitely
<i>Contract/Agreement Type:</i>	First Amendment to Economic Development Agreement
<i>Extension Options:</i>	N/A
<i>Reference No.:</i>	19069 / Construction, Land & Water Dept. Files
<i>Requisition No.:</i>	N/A
<i>Solicitation No.:</i>	N/A
<i>RX No.:</i>	N/A
<i>Agenda Item Number:</i>	Resolution No. 040311-14
<i>Date Approved by Council:</i>	March 11, 2004
<i>Date of Execution:</i>	April 2, 2004

**NOTE:**

*Forward this document electronically to the Office of the City Clerk. It will be kept of file in the Office of the City Clerk and provided to customers seeking information regarding the contract/agreement*

FIRST AMENDMENT TO CITY OF AUSTIN /

ENDEAVOR REAL ESTATE GROUP

CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT

This FIRST AMENDMENT TO CITY OF AUSTIN / ENDEAVOR REAL ESTATE GROUP CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT (the "Amendment"), is entered into by and between EGP Management, L.L.C., a Texas limited liability company ("EGP") and the City of Austin, Texas, a Texas home rule city and municipal corporation ("City").

RECITALS

- A. EGP and City entered into that certain "City of Austin/Endeavor Real Estate Group, Chapter 380 Economic Development Agreement," dated effective June 13, 2003 (the "Agreement") relating to economic development grants regarding the development of a mixed use project consisting of between approximately forty two (42) acres and fifty five (55) acres of land, as more particularly described in the Agreement (the "Property").
- B. EGP and City desire to amend the Agreement as set forth below.

AGREEMENT

In consideration of the mutual covenants and agreements set forth herein, EGP and City agree to amend the Agreement as follows:

- 1. Amendment to Section 4. The first sentence of Section 4 of the Agreement is amended as follows:

Owner Obligations. In consideration of the City's participation in the Program, if Owner proceeds with the Project and accepts Chapter 380 Payments from the City pursuant to this Agreement, Owner agrees that the following performance guidelines shall be met:

- 2. Amendment to Section 4(b). The first sentence of Section 4(b) of the Agreement is amended as follows:

During the term of this Agreement, Owner will designate and allocate a One Million and No/100 Dollars (\$1,000,000) fund from its construction budget to assist small local businesses to locate at the Project.

3. Amendment to Sections 5 (a) and 5(b)(i). Sections 5(a) and 5 (b)(i) of the Agreement are deleted in their entirety and replaced with the following:

Chapter 380 Payments.

- a. Payments. The City shall pay to Owner grants based on the following formulas applied to the Sales Tax Revenues and Ad Valorem Revenues paid to the City from the Project.
- b. Sales Tax Formula.
- i. For a period of five (5) years beginning on the Sales Tax Effective Date, the City shall pay the Owner a Chapter 380 Payment equal to eighty percent (80%) of the One Cent Sales Tax Revenues. For a period of fifteen (15) years following the initial five (5) year period, the City shall pay the Owner a Chapter 380 Payment equal to fifty percent (50%) of the One Cent Sales Tax Revenues. The Chapter 380 Payments calculated with respect to the One Cent Sales Tax Revenues shall be paid by the City to Owner no later than October 30<sup>th</sup> of each year based upon the amount of sales taxes collected by the City for the twelve (12) month period ending with the preceding April 30<sup>th</sup>.

4. Amendment to Section 5 (c). The first sentence of Section 5(c) of the Agreement is amended as follows:

For a period of twenty (20) years beginning on the Ad Valorem Tax Effective Date, the City shall pay the Owner a Chapter 380 Payment equal to twenty-five percent (25%) of the Incremental Ad Valorem Revenues.

The sixth sentence of Section 5(c) of the Agreement is amended as follows:

The Chapter 380 Payments with respect to the Incremental Ad Valorem Revenues shall be based on the amount stated in the Ad Valorem Revenue Notice, which shall be verified by the City, and shall be repaid to Owner by the City on an annual basis for the preceding year on or before October 30<sup>th</sup> following the tax year for which they were paid.

5. Amendment to Section 5 (e). The first sentence of Section 5(e) of the Agreement is amended as follows:

If, during the term of this Agreement, state law applicable to municipal taxation changes either in the form of sales taxes or ad valorem taxes, and as a result, the Chapter 380 Payments differ from the amount which would have been paid to Owner under the laws in effect as of the Effective Date of this Agreement, then the City, in its sole discretion may adjust the Chapter 380 Payments using

whatever discretionary taxes and revenues that are legally available to the City which can be allocated to the Chapter 380 Payments.

6. Amendment to Section 5. Section 5 of the Agreement is amended to add the following subsection (f) as follows:

- f. Payments Subject to Future Appropriations. Although certain payments under this Agreement are calculated based on a formula applied to ad valorem and/or sales tax revenues, this Agreement shall not be construed as a commitment, issue or obligation of any specific taxes or tax revenues for payment to Owner. All payments by the City under this Agreement are subject to City's appropriation of funds for such payments in the budget year for which they are made. The payments to be made to Owner, if paid, shall be made solely from annual appropriations from the general funds of the City or from such other funds of the City as may be legally set aside for the implementation of Article III, Section 52a of the Texas Constitution or Chapter 380 of the Local Government Code or any other economic development or financing program authorized by statute or home rule powers of the City under applicable Texas law, subject to any applicable limitations or procedural requirements. In the event the City does not appropriate funds in any fiscal year for payments due under this Agreement, City shall not be liable to Owner for such payments, and the Owner shall have the right but not the obligation to rescind this Agreement. To the extent there is a conflict between this paragraph 5(f) and any other language or covenant in this Agreement, this paragraph 5(f) shall control.

7. New Section 24. A new Section 24 is added to read as follows:

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 of the Project or the design, construction or operation of any portion of the Project.

8. Effect of Amendment. Except as specifically amended by this Amendment, the terms and provisions stated in the Agreement shall remain in full force and effect. This Amendment and the Agreement, including all exhibits to such documents, constitute the entire agreement between the parties and supersede all prior and contemporaneous agreements and understandings of the parties. In the event of any inconsistency, the terms and provisions of this amendment shall control over and modify the terms and provisions of the Agreement.
9. Execution. This instrument may be executed in any number of counterparts. Additionally, the (i) the signature pages taken from separate individually executed

counterparts of this instrument may be combined to form multiple fully executed counterparts; and (ii) a facsimile signature shall be deemed to be an original signature for all purposes. All executed counterparts of this instrument shall be deemed to be originals, but all such counterparts, when taken together, shall constitute one and the same agreement.

EXECUTED to be effective as of the 2nd day of April, 2004.

**EGP:** **EGP MANAGEMENT, L.L.C.,**  
a Texas limited liability company

By: Kirk Rudy

Printed Name: Kirk Rudy

Title: EVP

**CITY:**

By: Toby Hammett Futrell

Printed Name: TOBY HAMMETT FUTRELL

Title: City Manager

Approved as to form: David Lloyd  
City of Austin Law Department



Via Hand Delivery

June 22, 2004

Ms. Toby Futrell  
City Manager  
Municipal Building  
124 West 8th Street, #103  
Austin, Texas 78701

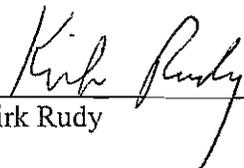
Re: Chapter 380 Economic Development Agreement for The Domain dated June 13, 2003, as amended (the "Agreement") between EGP Management, L.L.C., a Texas limited liability corporation ("EGP") and the City of Austin, a Texas home rule city and municipal corporation ("City")

Dear Ms. Futrell:

On behalf of EGP, we hereby request the City's consent for an assignment of the Agreement. Section 15 of the Agreement provides that EGP "may not assign all or part of its rights and obligations to a third party without the prior written approval of the City, which approval shall not be unreasonably withheld or delayed." This letter is intended to serve as written notification that EGP intends to assign its rights and interests pertaining to the Agreement to The Domain Shopping Center, L.P., a Delaware limited partnership ("The Domain"), its successors and assigns. We hereby request the City's consent to such assignment. Enclosed is a copy of the proposed assignee's most recent annual report, stating its financial condition.

We would appreciate your concurrence to the proposed assignment by signing in the space provided below and returning an executed original to me. Thank you for your customary courtesy and assistance in this matter. Please call me if you have any questions.

Very truly yours,

  
\_\_\_\_\_  
Kirk Rudy

CITY HEREBY CONSENTS TO THE ASSIGNMENT  
OF THE AGREEMENT FROM EGP TO THE DOMAIN  
SHOPPING CENTER, L.P.

CITY OF AUSTIN, a  
home rule city and municipal corporation

By: Toby Futrell  
Toby Futrell, City Manager

Date: 7/20/04

The undersigned hereby assumes and agrees to perform all of the rights and obligations of EGP  
under the Agreement.

THE DOMAIN SHOPPING CENTER, L.P., a Delaware limited partnership

By: SPG DOMAIN, LLC, a Delaware limited liability company,  
its general partner

By: SIMON PROPERTY GROUP (TEXAS), L.P., a  
Texas limited partnership, its sole member

By: GOLDEN RING MALL COMPANY LIMITED  
PARTNERSHIP, an Indiana limited partnership,  
its general partner

By: SIMON PROPERTY GROUP  
(DELAWARE), INC., a Delaware  
corporation, its general partner

By: David Simon  
David Simon, Chief Executive Officer

Date: June 23, 2004