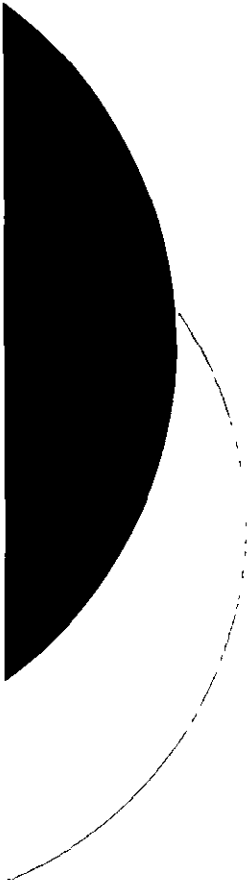# Late Backup

The Domain Performance-Based Incentive Agreement:
Compliance Review and Status

October 2, 2008

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Presentation Overview

- o Public Benefits of the Project to the City
- o Domain Project Summary
- o Terms of the Chapter 380 Economic Development Grant
- o Compliance Process
- o Compliance Status:
  - Performance criteria and compliance procedures
- o Payment Obligations
- o Summary

Public Benefits of the Project to the City

- o Mixed-Use, Urban Village Development
  - Encompasses 53.16 acres
  - Mix of uses including residential, office, shopping, entertainment, recreation, restaurants, and a hotel
- o New Urbanist Features
  - Residential over retail, wide sidewalks, pedestrian amenities, playscapes, sidewalk cafes, open public spaces, structured parking, native landscaping, and public art

Public Benefits of the Project to the City

- Creates Employment Opportunities
- Provides Leveraged Financial Contribution
- Supports Small Local Businesses
- Provides Opportunities for Minority/Women-Owned Business Enterprises (M/WBE)
- Develops S.M.A.R.T. Housing

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Domain Project Summary

- o Revitalization of 40-Year Old Industrial Campus
- o Creation of High-Density, New Urbanist Development with Permanent Jobs and Affordable Housing
- o Stimulus for the Local Economy

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Chapter 380 Economic Development Grant

- Performance-Based Terms
  - Property tax:
    - 25% of increment for 20 years
  - Sales tax:
    - 80% for years 1-5
    - 50% for years 6-20
    - 2% for 20 years toward Simon's affordable housing contribution
- Economic Development Grant Cap
  - $25 million in Net Present Value (NPV) Dollars
  - Property tax grant payments and sales tax grant payments end after 20 years or when the cap is reached, whichever is sooner
- Simon's Contribution to the Affordable Housing Finance Corporation (AHFC)
  - 2% of sales tax for 20 years or the end of the agreement, whichever comes first

Compliance Process

o Independent Party Review

- Required by City Council resolution
- Report completed

Compliance Process

- ○ Simon Submits Compliance Package
  - Includes signed certification
- ○ City Departments Perform Compliance Review:
  - Economic Growth and Redevelopment Services Office (EGRSO)
  - Department of Small and Minority Business Resources (DSMBR)
  - Neighborhood Housing and Community Development (NHCD)
- ○ Compliance Review Involves:
  - Obtain, inspect, and review documentation
  - Perform procedures to ascertain compliance
  - Maintain backup documentation for each performance criteria

Compliance Status:
Performance Criteria and Compliance Procedures

o Maximum Project Area and Project Construction Commencement

o Employment Opportunities

o Leveraged Financial Contribution

o Support for Small Local Business

o Minority/Women-Owned Business Enterprises

o S.M.A.R.T. Housing

o Sales Tax Reports

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Compliance Status:
Performance Criteria and Compliance Procedures

Maximum Project Area and Project Construction Commencement

Performance Criteria - Simon

o Limit Project development to "not to exceed 55 acres"

o Issue a notice to proceed to commence construction by June 13, 2007, and diligently pursue construction of the Project

Compliance Procedure - City

o Reviewed subdivision plat information and confirmed the Project area is 53.16 acres

o Inspected documentation to confirm a notice to proceed was issued by the specified date

Status

o Compliance confirmed

Compliance Status:
Performance Criteria and Compliance Procedures

Employment Opportunities

<u>Performance Criteria - Simon</u>

o If construction of the Project is phased, create jobs on the basis of 0.0016 jobs per square foot constructed

o Create at least 1,100 permanent jobs upon completion of all phases of the Project

Compliance Status:
Performance Criteria and Compliance Procedures

Employment Opportunities (continued)

Compliance Procedures - City

o Determined that Simon is required to create 861 full-time equivalent jobs based on 538,162 square feet constructed

o Obtained Tenant Employment Reports (TER) affirming the number of employees hired

o For a selected sample of tenants, compared information on TER to Texas Workforce Commission (TWC) reports and validated 1,647 employees were hired

Status

o Compliance confirmed

Compliance Status:
Performance Criteria and Compliance Procedures

Leveraged Financial Contribution

Performance Criteria - Simon

o Use reasonable efforts to seek contributions and grants from Capital Metro Transit Authority (CMTA) and Travis County

Compliance Procedure - City

o Obtained the Chapter 381 agreement between Simon and Travis County and confirmed that Travis County will provide an incentive to Simon not-to-exceed $5 million, in Net Present Value (NPV) dollars

o Reviewed documentation and confirmed that Simon made reasonable efforts to seek contributions from CMTA

Status

o Compliance confirmed

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Compliance Status:

Performance Criteria and Compliance Procedures

Support for Small Local Business

Performance Criteria - Simon

o Designate, allocate, and capitalize $1 million Domain Fund ("Fund") from Simon's own budget to assist small local businesses from Travis, Hays, and Williamson counties to locate at the Project by providing assistance for any of the following:

- Designing/constructing interior improvements
- Collateral for small business loans
- Store location advertising
- Subsidization of rental rates

o Provide tenant leases for generally a five year period

o Provide an annual report to the City Manager including:

- Results of exit interviews
- Performance results
- Remaining balance in the Fund

Compliance Status:
Performance Criteria and Compliance Procedures

Support for Small Local Business (continued)

Compliance Procedures - City

o Confirmed documentation that Simon created, allocated, and capitalized the $1 million Fund

o Confirmed the Fund provided over $1 million in financial assistance with design and construction of interior improvements to five businesses upon inspecting the following documents:

- Copies of tenant leases
- Copies of cancelled Simon checks

Compliance Status:
Performance Criteria and Compliance Procedures

Support for Small Local Business (continued)

Compliance Procedures (continued) - City

o Obtained and reviewed the annual report and confirmed the following:

- The five businesses assisted opened in 2007 with negotiated leases of 10 years
- The Fund provided assistance in accordance with the performance criteria
- There is no remaining balance in the Fund

o Determined that exit interviews are not applicable because none of the five businesses assisted by Simon have left the Domain

Status

o Compliance confirmed

Compliance Status:
Performance Criteria and Compliance Procedures

Minority/Women-Owned Business Enterprises (M/WBE)

Performance Criteria - Simon

o Retain a third-party consultant specializing in outreach to qualified M/WBE contractors and consultants

o Use good faith efforts to cause agents and contractors to comply with the spirit and intent of the City's M/WBE requirements

Compliance Procedures - City

o Obtained written evidence and confirmed that Simon hired Lopez-Phelps as a third-party consultant

o Reviewed Lopez-Phelps' scope of work and confirmed that the firm was hired to perform outreach

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Compliance Status:
Performance Criteria and Compliance Procedures

Minority/Women-Owned Business Enterprises (continued)

Compliance Procedures (continued) - City

o Obtained documentation and confirmed the following:
- Four outreach/pre-bid meetings were held in 2005
- 69 attendees were at the pre-bid meetings, of which 49 represented businesses
- Bid packages were sent to DSMBR

o DSMBR reviewed fax logs and or other correspondence and verified that bid opportunity notices were sent to M/WBE firms listed on DSMBR's availability list and were sent within a reasonable timeframe

Status

o Compliance confirmed

Compliance Status:
Performance Criteria and Compliance Procedures

S.M.A.R.T. Housing

Performance Criteria - Simon

- o Issue a notice to proceed to commence construction by June 13, 2009
- o Pursue construction of at least 300 residential units
- o Comply with S.M.A.R.T. Housing guidelines
- o Provide at least 10% affordability level for households at or below 65% of Median Family Income (MFI)

Compliance Status:
Performance Criteria and Compliance Procedures

S.M.A.R.T. Housing (continued)

Compliance Procedures - City

o The following inspections resulted in certification of Simon's S.M.A.R.T. Housing program:

- Final inspection and signed Final Approval from the Austin Energy Green Building Program
- Final inspection by Neighborhood Housing and Community Development (NHCD) to certify that accessibility standards were met

o NHCD conducted a file review of rental units and confirmed Simon is in compliance with affordability requirements

o NHCD verified the income eligibility of the residents of the affordable units

Compliance Status:
Performance Criteria and Compliance Procedures

S.M.A.R.T. Housing (continued)

Compliance Procedures (continued) - City

o NHCD reviewed Simon's Affordable Housing Report and confirmed the following:

- 390 units were constructed
- 39 units are set aside for affordable housing tenants
- 26 additional units are being planned for construction, three of which will be set aside for affordable housing tenants

Status

o Compliance confirmed

Compliance Status:
Performance Criteria and Compliance Procedures

Sales Tax Reports
Performance Criteria - Simon
o On a quarterly basis, report the amount of sales tax revenues generated from the Project
Compliance Procedure - City
o City determined the most efficient method is to obtain the sales tax revenue information directly from the Texas Comptroller of Public Accounts
Status
o Sales tax revenue information obtained and confirmed

Payment Obligations

- First Grant Payment to Simon is Due by October 30, 2008
  - Estimated at $946,964
  - Based on 80% of City sales tax collected from September 2007 through April 2008
  - Simon is not eligible for a property tax grant until October 30, 2009
- First Grant Payment to AHFC from Simon is Due Approximately by November 14, 2008
  - Estimated at $23,674
  - Based on 2% of City sales tax collected from September 2007 through April 2008

Summary

- Grant is Performance Based
- First Sales Tax Payment is Due by October 30, 2008
- Incentives are Provided to Generate Public Benefits:
  - High-density, mixed-use urban destination
  - Employment opportunities
  - Leveraged financial contribution
  - Small local business support
  - M/WBE opportunities
  - S.M.A.R.T. housing
- The City's Compliance Review Finds Simon is in Compliance with all Performance Criteria