I. Overview

The Chapter 380 Economic Development Agreement ("Agreement") between the City of Austin ("City") and EGP Management, L.L.C. was executed June 13, 2003, having been authorized by Resolution 20030515-004. The First Amendment was executed April 2, 2004 after being authorized by Resolution 20040311-014. In July 2004 EPG Management L.L.C. assigned the Agreement to The Domain Shopping Center, L.P. ("Owner").

The Agreement covers the development of a 53.16 acre portion of The Domain (the "Project") and some aspects of the operation within the Project area over approximately 20 years. Accordingly, some of the Owner's obligations under the agreement apply to the development of the Project while others apply to the operation.

Compliance with the following requirements has been verified previously and no follow up is needed:

A. Commencement of Project,

B. Financial Contributions,

C. Permitting and Subdivision and

D. Minority/Women Owned Business Enterprises.

The following requirements are ongoing and are monitored annually:

A. Support for Local Small Businesses (Domain Fund),

B. S.M.A.R.T. Housing affordability, and

C. Employment Opportunities.

This report considers activities that have occurred since or were not included in the February 2011 report, including those relevant to the anticipated Chapter 380 payment, which is based on sales taxes generated between May 1, 2010 and April 30, 2011 ($1,662,260.86) and on 2010 property taxes ($195,266.01).

Monitoring for some obligations is based on completion of a project element. The elements of S.M.A.R.T. Housing apply to all housing developed within the Project, and except for affordability, which is monitored annually, are monitored during years when housing units are completed and lease-up begins. Development of housing in the Project was completed in prior years, so compliance with S.M.A.R.T. Housing requirements has already been verified. Housing affordability will be monitored this year, as it is every year. Employment opportunities between June 30, 2010 and March 31, 2011 are being monitored this year.

Part II of this report details the Owner's obligations and the respective compliance statuses, Part III reviews obligations of the Owner and the City regarding the Chapter 380 payments, and Part IV summarizes the compliance status of each obligation.

As stated in the October 1, 2008 Independent Accountant's Report on Applying Agreed Upon Procedures by Padgett Stratemann and Co., LLP (procedures 26 and 27) the Sales Tax Effective Date, defined in §2 of the Agreement, is September 3, 2007 and the Ad Valorem Tax Effective Date, also defined in §2 of the Agreement, is January 1, 2008. Accordingly, the anticipated October 2011 Chapter 380 payment will be based on Ad Valorem Tax Revenues and Sales Tax Revenues as defined in §2 of the Agreement.

II. Owner Obligations

A. ***Commencement of Project (§4.a)*** *Owner must issue a notice to proceed to commence construction by June 13, 2007, and diligently pursue construction of the Project*.

Status: Compliance has been verified previously; see October 1, 2008 report.

B. ***Support for Local Small Businesses (§4.b)*** *During the term, Owner is required to designate and allocate a $1,000,000 Domain Fund from its construction budget to assist small, local businesses to locate at the Project.*

1. Obligation: *The Domain Fund was to be fully capitalized upon commencement of Project construction (§4.b.i).*

   Status: Compliance has been verified previously; see October 1, 2008 report.

2. Obligation: *The Domain Fund is to be used to attract and facilitate the presence of small, locally owned businesses to the Project from Travis, Hays & Williamson counties (§4.b.ii).*

   Status: Compliance has been verified previously; see October 1, 2008 report.

3. Obligation: *Money from the Domain Fund is to be used for each endowment fund candidate in some or all of the following manners (§4.b.iii):*

   a. set aside for the cost of designing/constructing interior improvements of tenant's premises (§4.b.iii(a));

   b. set aside as security (collateral) for small business loans made to a tenant (§4.b.iii(b));

   c. used toward all or part of the cost of advertising for the new store location; and/or (§4.b.iii(c));

   d. subsidize the rental rate required by the Project over the term of the lease (§4.b.iii (d)).

   Status: Compliance has been verified previously; see October 1, 2008 report.

4. Obligation: *Terms of tenants' leases shall generally be for a period of five years (§4.b.iv).*

   Status: Compliance has been verified previously; see October 1, 2008 report.

5. Obligation: *Funds used toward interior improvements, relocation costs and/or rent reduction will typically be advanced to the tenant without a repayment obligation (§4.b.v).*

   Status: Compliance has been verified previously; see October 1, 2008 report.

6. Obligation: *Owner is required to provide annual reports to the City Manager and to the City's Economic Growth and Redevelopment Services Office (EGRSO) Director showing how the Domain Fund has been used the previous 12 month period. The report is to contain a performance report section including, but not limited to (§4.b.vii)):*

   a. *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;*

   b. *a description of the distribution of the funds;*

   c. *the balance of the funds;*

   d. *analysis of performance results in terms of cumulative and long term presence of local small businesses at the Project;*

   e. *the results of exit interviews with any small local business leaving the Domain and,*

   f. *a description of advertising targeted to promote small business inclusion.*

   Findings:

   a. As of the February 2011 report, six businesses, Ks Home Designs dba Loft; Luxe Apothetique; Spa Reveil; St. Thomas, Inc.; Tea Craft, dba The Steeping Room; and Chocogelatier Austin Domain L.L.C. dba Viva Chocolato! were open for business at Domain. According to the May 2011 Annual Domain Fund Report all except Viva Chocolato! remain in business; Viva Chocolato! closed in March 2011.

   b. Compliance regarding distribution and balance of the Domain Fund has been verified previously; see October 1, 2008 report.

   c. In June 2010, all six businesses were open and in business at the Domain, as evidenced by their inclusion in the Sales Tax Area Report from the Texas Comptroller of Public Accounts for the August 2010 allocation to the City of Austin.

   d. As of March 2011, Loft, Luxe Apothetique, Spa Reveil, St. Thomas, and The Steeping Room remained open, as evidenced by their inclusion in the Sales Tax Area Report from the Texas Comptroller of Public Accounts for the May 2011 allocation to the City of Austin.

   Status: Compliant

7. Obligation: *Exit interviews are to be conducted with small local businesses leaving the Domain as long as there is a balance in the Domain Fund (§4.b.viii).*

   Finding: Domain Fund expenditures exceeding $1,000,000 were confirmed in the October 1, 2008 report. Since no balance remains in the Domain Fund, this requirement does not apply.

   Status: Not applicable

C. S.M.A.R.T. Housing (§4.c): *Owner must issue a notice to proceed to commence by June 13, 2009 and diligently pursue construction of at least 300 residential units.*

1. Obligation: *The Project's residential units must comply with S.M.A.R.T. Housing guidelines with a potential exception of not meeting the ¼ mile minimum distance from the nearest transit route, provided Owner has used reasonable efforts to fully comply with all S.M.A.R.T. Housing requirements (§4.c).*

   Findings:

   a. Compliance regarding the notice to proceed and diligent pursuit of construction has been verified previously; see October 1, 2008 report.

   b. Compliance with most S.M.A.R.T. Housing requirements is confirmed prior to issuance of a Certificate of Occupancy (CO); only affordability is reviewed annually. Compliance with S.M.A.R.T. Housing requirements was verified for Residences at the Domain, the first 390 units, in the October 1, 2008 report. Compliance with S.M.A.R.T. Housing requirements was verified for Villages at the Domain, 26 units, in the October 23, 2009 report.

   c. Correspondence from NHCD received September 19, 2011 by EGRSO confirms that Residences at the Domain was in compliance with applicable affordability requirements.

   d. Correspondence from NHCD dated December 15, 2011 confirmed that Villages at the Domain was in compliance with applicable affordability requirements.

   Status: Compliant

2. Obligation: *At least 10% of the housing units must be affordable for households at or below 65% of Median Family Income (MFI) who spend no more than 30% of their income on housing, provided sufficient economic development contributions are available from Travis County to reimburse Owner for economic impact of reducing affordability level from 80% MFI to 65% MFI and parties have agreed on the value of the economic impact (§4.c).*

Findings:

a. Contributions available from Travis County: According to §7.1 of the Chapter 381 Economic Development agreement between Travis County and Simon Property Group (SPG), SPG will receive contributions from Travis County up to the net present value of $5,000,000 when discounted at an annual rate of 7.5%. According to §7.2, each annual payment will be equal to 50% of the difference between the Ad Valorem taxes paid on the Reimbursement Year value less the taxes paid on the Effective Date value, up to the maximum payment amount defined in §7.1.

b. Parties have agreed on the value of the economic impact: The City of Austin NHCD and SPG agreed that the economic impact of reducing the affordability level from 80% MFI to 65% MFI is $1,373,096, as demonstrated in the October 1, 2008 report.

c. Affordable housing for households whose income does not exceed 65% MFI: Correspondence from NHCD received September 19, 2011 by EGRSO confirms that the 39 affordable Residences at the Domain units were occupied by or reserved for persons whose income did not exceed 65% MFI. Correspondence from NHCD received December 15, 2011 by EGRSO confirms that the 3 affordable Villages at the Domain units were occupied by or reserved for persons whose income did not exceed 65% MFI.

Status: Compliant

D. Employment Opportunities (§4.d): *Owner is obligated to have created at least 1,100 permanent jobs at the Project upon completion of all phases of the project. If project is phased, full-time equivalent jobs are to be created on the basis of 0.0016 jobs per square foot constructed, exclusive of residential uses.*

Findings:

1. On January 31, 2011 the City informed SPG that the following Tenant Employment Reports (TER) would need to be received by February 18, 2011 in order for the review to stay on track to make the Chapter 380 payment by October 30, 2011:
   a. June 30, 2010;
   b. September 30, 2010 and
   c. December 31, 2010.

2. Also on January 31, 2011, the City informed SPG that the TER for March 31, 2011 would need to be received by April 29, 2011 in order for the review to stay on track to make the Chapter 380 payment by October 30, 2011.

3. SPG provided TER's from most commercial tenants for each of the following periods:
   a. June 30, 2010 (received May 13, 2011),
   b. September 30, 2010 (received May 13, 2011),
   c. December 31, 2010 (received May 13, 2011) and

d. March 31, 2011 (received August 29, 2011).

4. For the sake of efficiency, the City makes one monitoring trip annually to review the support documents which SPG retains in their management office from the time they are collected until the City's visit. In previous years, the City selected a stratified random sample of TER's to verify after receiving all TER's for each of the four periods. The verification process was revised this year so that SPG could obtain support documentation from tenant businesses while it was still easily accessible. An alternative sample selection strategy was required so that the City could initiate the sample selection process before receiving TER's. In August 2010 a Year 4 stratified sample was selected based on the average numbers of Year 3 FTE employees. The Year 4 sample is:
   a. Macy's
   b. North,
   c. Kona Grill,
   d. Absolute Software,
   e. Victoria's Secret,
   f. J. Crew Retail,
   g. Luxe Apothetique LP,
   h. Spa Reveil,
   i. Viva Chocolato!,
   j. MAC
   k. White House/Black Market,
   l. Louis Vuitton,
   m. LaCoste,
   n. Calypso Christiane Calle,
   o. Aldo,
   p. Management Office,
   q. Anne Fontaine, and
   r. Ameripark Mario Rodriguez.

   The goal during the verification process is to sample at least 10% of the FTE positions created over the four periods, so a stratified set of ten extra stores was selected; their backup will be used in the event that some stores in the sample do not provide backup or close during Year 4. The ten extra stores are:
   a. Westin,
   b. McCormick & Schmick's Seafood Restaurant,
   c. The Steeping Room,
   d. Borders,
   e. Starbucks,
   f. Madewell,
   g. Metropark,
   h. Pronto Wash,
   i. Lucky Brand Dungarees Store, and
   j. Ann Taylor.

5. For June 30, 2010, 1,391 FTE positions are reported.
6. For September 30, 2010, 1,199 FTE positions are reported.
7. For December 31, 2010, 1,330 FTE positions are reported.
8. For March 31, 2011, 1,214 FTE positions are reported.
9. On September 20, 2011 the City and the third party reviewer went to SPG's management office at Domain to review the support for these tenants' TER's.
10. Tenants reported a total of 522.08 FTE employees on the TER's that were reviewed; 459.58 FTE employees were verified by the City.
11. The average number of FTE jobs for Year 4 is 1,130. It was calculated by adding:
    a. 115 average verified FTE's and
    b. 1,015, which is the product of 1,153 average reported FTE's which were not subject to verification multiplied by 88%, the ratio of verified/reported FTE jobs.

Status: Compliant

E. ***Financial Contributions (§5.d):*** *Owner shall use reasonable efforts to seek contributions and grants from Capital Metro Transit Authority (CMTA) and Travis County.*

Status: Compliance has been verified previously; see October 1, 2008 report.

F. ***Sales Tax Reports (§6):*** *Owner is required to report quarterly to the City, based on reports filed by Project tenants with the State Comptroller's Office, the amount of sales tax revenues generated from the Project for the previous calendar quarter.*

Finding: As evidenced by a July 23, 2008 memorandum from Fred Evins of the City of Austin EGRSO, the City relieved SPG of this requirement, after determining that the most efficient method of gathering the information would be to seek a report directly from the Texas Comptroller of Public Accounts.

Status: Not applicable

G. ***Permitting and Subdivision (§8):*** *Prior to commencement of Project, Owner is required to identify the exact project boundaries, not to exceed 55 acres, through a subdivision plat application filed with City.*

Status: Compliance has been verified previously; see October 1, 2008 report.

H. Minority/Women Owned Business Enterprises (M/WBE) (§9): *Owner is required to use good faith efforts to cause its agents and contractors to comply with the spirit and intent of the City's M/WBE requirements and to retain a third party consultant specializing in outreach to qualified M/WBE contractors and consultants.*

Status: Compliance has been verified previously; see reports of February 2011, October 2009 and October 2008.

III. Chapter 380 Payment

A. *For a period of five years beginning on the Sales Tax Effective Date, City shall pay Owner a Chapter 380 payment equal to 80% of the One Cent Sales Tax Revenues. The payment shall be based on the amount of sales tax collected by the City for the 12 month period ending the preceding April 30. For a period of 15 years following the initial five year period, City shall pay Owner a Chapter 380 payment equal to 50% of the One Cent Sales Tax Revenues. The payment shall be based on the amount of sales tax collected by the City for the 12 month period ending the preceding April 30 (§5.b.i.).*

Findings:

1. The Sales Tax Effective Date is September 3, 2007.

2. The first Chapter 380 payment to SPG was based on sales taxes collected from September 3, 2007 through April 30, 2008. The second was based on sales taxes collected from May 1, 2008 through April 30, 2009. The third was based on sales taxes collected from May 1, 2009 through April 30, 2010. The anticipated fourth payment will be based on sales taxes collected from May 1, 2010 through April 30, 2011.

3. The City receives monthly Sales Tax Area Reports from the Texas Comptroller of Public Accounts showing the City of Austin sales tax revenue generated by the Project. Local sales tax is allocated to the City of Austin the second month after it is collected. Attached are Sales Tax Area Reports showing the local sales tax collected in the Project area from May 2010 through April 2011.

4. According to the Sales Tax Area Reports received from the Texas Comptroller of Public Accounts, the sum of City of Austin sales taxes generated by the Project tenants from May 2010 through April 2011 was $2,027,147.39. The sales tax funded portion of the third Chapter 380 payment to SPG will be based on 80% of $2,027,147.39, or $1,621,717.91.

5. Every business included in a Sales Tax Area Report is in the Project and has a Domain address, as verified using the City's Domain Phase 1 Address Point GIS Layer Map.

B. *An additional 2% of the One Cent Sales Tax Revenue shall become part of the Chapter 380 payments, increasing the percentages to 82% during the first five years and 52% during years 6-20 (Additional Sales Tax Payment). Within 15 days of receipt, Owner shall remit the Additional Sales Tax Payment to the City (§5.b.ii).*

Findings:

1. Compliance regarding remittance of the Additional Sales Tax Payment is reviewed for the prior year. The City received a 2010 Additional Sales Tax Payment in the amount of $33,148.59 from SPG on May 2, 2011, seven days after April 25, 2011, the date SPG received the 2010 Chapter 380 payment.

2. According to the Sales Tax Area Reports received from the Texas Comptroller of Public Accounts, the sum of City of Austin sales taxes generated by the Project tenants from May 2010 through April 2011 was $2,027,147.39. This sales tax funded portion of the Chapter 380 payment to SPG will be based on 2% of $2,027,147.39, or $40,542.95, which SPG is required to remit to the City for deposit to the Austin Housing Finance Corporation within 15 days of receiving the Chapter 380 payment.

C. *For a period of 20 years beginning on the Ad Valorem Tax Effective Date, the City shall pay Owner a Chapter 380 payment equal to 25% of 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, which is deemed to be $235,228 per acre (§5.c).*

Findings:

1. The Ad Valorem Tax Effective Date is January 1, 2008.

2. The following table summarizes the baseline valuations, 2010 valuations, City of Austin tax on the incremental improvements and the Chapter 380 payment amount associated with each Travis Central Appraisal District (TCAD) parcel comprising the Project area.

Parcel ID Prop ID	*Acres in Parcel*	*Baseline Valuation*	*FY 10 Certified Valuation*	*Incremental Valuation*	*CoA Tax on Increment @ 0.4571*	*Estimated FY 12 Payment*
0256060203 767635	27.6300	6,499,349.64	57,886,440	51,387,090.36	234,890.39	58,722.60
0256060204 767636	8.5400	2,008,847.12	10,020,960	8,012,112.88	36,623.37	9,155.84
0256060205 767637	5.6100	1,319,629.08	28,268,075	26,948,445.92	123,181.35	30,795.34
0256060302 737156	3.4140	803,068.39	24,906,650	24,103,581.61	110,177.47	27,544.37
0256060303 737157	1.1380	267,689.46	14,485,380	14,217,690.54	64,989.06	16,247.27
0256060304 737158	5.1210	1,204,602.59	37,934,244	36,729,641.41	167,891.19	41,972.80
0256060305 774411	1.1380	267,689.46	5,558,487	5,290,797.54	24,184.24	6,046.06
0256060306 774412	0.5690	133,844.73	4,318,261	4,184,416.27	19,126.97	4,781.74
	53.1600	12,504,720.48	183,378,497	170,873,776.52	781,064.03	195,266.01

3. Travis County Tax Office's online records show that no 2010 property taxes are owed for the Project area.

4. The property tax funded portion of the second Chapter 380 payment to SPG based on Ad Valorem Tax Revenues is $195,266.01.

D. *The total Chapter 380 payments to be paid to Owner during the term of this Agreement shall not exceed the equivalent of $25 million calculated on a net present value basis when discounted at an annual rate of 7.5%. The payments shall be adjusted over time to reflect 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. Except as set forth in §4.c, if Owner receives economic development contributions from Capital Metro Transit Authority and/or Travis County, the maximum payment amount shall be reduced accordingly by up to $7,500,000, calculated on a net present value basis, using an annual discount rate of 7.5% (§5.d).*

In accordance with (§4.c), Owner may recoup the economic impact of reducing the affordability level from 80% MFI to 65% MFI through economic development contributions from Travis County. Funds received from Travis County shall be applied first to this purpose then to reducing the maximum payment amount (§5.d).

Findings:

1. As stated in the October 1, 2008 “Independent Accountant’s Report on Applying Agreed Upon Procedures” by Padgett Stratemann and Co., LLP (procedure 15), SPG and the City agreed that the cost of reducing the affordability level from 80% of MFI to 65% MFI is $1,373,096.

2. As of September 14, 2011, the City had paid SPG a total of $3,845,691.29.

3. As of January 6, 2012 Travis County had made one Chapter 381 payment of $368,248.54 to SPG and had accrued another $406,978.52 which they anticipate paying to SPG once compliance with the job creation requirements in the Chapter 381 agreement has been verified.

4. The total allowable Chapter 380 payment to SPG exceeds Chapter 380 and Chapter 381 payments to date by more than $21 million, as shown in the following summary:

Baseline payments cap:	$25,000,000.00
Travis County Ch. 381 payments to date:	$368,248.54
Cost of reducing affordability from 80% MFI to 65% MFI:	$1,373,096.00
Amount of Travis County payments to deduct from cap:	$0.00
Adjusted payments cap:	$25,000,000.00
City of Austin payments against cap:	$3,845,691.29
Difference:	$21,154,308.71
City of Austin current year payment:	$1,857,526.87

IV. Summary and Conclusion

A. Compliance Status Summary

Owner Obligation	Compliance Status
Commencement of Project	Compliance verified previously
Support for Local Small Businesses	
Capitalization	Compliance verified previously
Attract small, locally owned businesses	Compliance verified previously
Use of Domain Fund	Compliance verified previously
Lease Terms	Compliance verified previously
No repayment obligation	Compliance verified previously
Annual reports	Compliant
Exit interviews	Not applicable
S.M.A.R.T. Housing	
Notice to Proceed	Compliance verified previously
Requirements	Compliance verified previously
Affordability	Compliant
Employment Opportunities	Compliant
Financial Contributions	Compliance verified previously
Sales Tax Reports	Not applicable
Permitting and Subdivision	Compliance verified previously
Minority/Women Owned Business Enterprises	
Spirit and Intent	Compliance verified previously
Third party consultant	Compliance verified previously

B. Chapter 380 Payment

The anticipated October 30, 2011 Chapter 380 payment to SPG will be calculated based on Ad Valorem Tax Revenues and Sales Tax Revenues as defined in §2 of the Agreement as follows:

Ad Valorem Tax Revenues:	$195,266.01
Sales Tax Revenues:	$1,662,260.86
Total:	$1,857,526.87
Less Remittance to AHFC:	($40,542.95)
Net Chapter 380 payment to SPG:	$1,816,983.92

C. Conclusion: The City's compliance review finds that SPG is in compliance with all applicable performance requirements and is eligible for a Chapter 380 payment in the amount of $1,857,526.87.