

CHAPTER 380 ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

As of July 21, 2015 (the “Effective Date”) this Chapter 380 Economic Development Incentive Agreement is entered into between the City of San Marcos, Texas (the “City”), a Texas municipal corporation, and Tanger Properties Limited Partnership, a North Carolina limited partnership (the “Owner”). Tanger and the City are collectively referred to as the “Parties”.

ARTICLE 1. RECITALS

Section 1.01. Tanger owns and operates a regional retail outlet mall commonly known as Tanger Outlet Center-San Marcos (“Tanger Outlets”) located at IH-35 and Centerpoint Road.

Section 1.02. Tanger Outlets has, for several years, been one of the most popular tourist destinations in the State of Texas, and generates significant ad valorem property tax and sales tax revenues for the City.

Section 1.03. Tanger has proposed a project to renovate and expand Tanger Outlets to add new retail tenants, which will result in significant increases in property tax and sales tax payments to the City. The renovation and expansion are necessary to stay competitive with other retail outlet centers that are being improved or added in other Texas cities.

Section 1.04. The City seeks to promote local economic development and to stimulate business and commercial activity in the City. The renovation and expansion of the Tanger Outlets will advance the City’s interests by attracting new and retaining existing business, creating jobs, increasing sales and property tax revenues and enhancing the image of the City.

Section 1.06. The City is authorized under Chapter 380 of the Texas Local Government Code to offer certain economic development incentives for public purposes, including promotion of local economic development and the stimulation of business and commercial activity in the City.

Section 1.07. For the reasons stated in these Recitals, which are incorporated into and made a part of this Agreement, and in consideration of the mutual benefits and obligations set forth herein, the Parties enter into this Agreement and agree to the terms and conditions set forth in this Agreement.

ARTICLE 2. DEFINITIONS

Section 2.01. “*Additional Property Taxes*” are the City’s share of the ad valorem taxes received from the Hays County Tax Assessor-Collector each calendar year during the Term on the value of all new Real Property Improvements on the Site completed after the Effective Date in excess of the Base Tax Year Value.

Section 2.02. “*Additional Sales Taxes*” means the Sales Tax Revenue received by the City in 2015, and each subsequent calendar year during the Term, attributable to new business

and retail activity from within the Real Property Improvements completed after the Effective Date in excess of the Base Sales Tax Value.

Section 2.03. “Base Tax Year Value” means the ad valorem tax value of the Real Property Improvements on the Site, as established by the Hays County Appraisal District for calendar year 2014.

Section 2.04. “Base Sales Tax Value” means the Sales Tax Revenue for calendar year 2014.

Section 2.05. “Grant Payments” means the City’s payments to Tanger once per calendar year during the Term of an amount equal to 75 percent of Additional Property Taxes and 75 percent of Additional Sales Taxes generated from within the Site during the full calendar year immediately preceding the year in which the payment is made.

Section 2.06. “Site” means the real property within the city limits of the City of San Marcos, Texas owned by Tanger at IH-35 South and Centerpoint Road upon which Tanger Outlets is located.

Section 2.07. “Real Property Improvements” means such improvements to real property on the Site, other than personal property, subject to ad valorem tax assessment.

Section 2.08. “Sales Tax Revenue” means the City’s share of local sales and use tax revenue generated from business and retail activity on the Site and paid to the City by the Texas Comptroller of Public Accounts.

Section 2.09. The “*Term*” of this Agreement shall commence on the Effective Date and continue until December 31, 2024 (unless terminated sooner, as provided in this Agreement), except that Tanger’s obligation to submit in 2015 a Compliance Certificate for the year 2024 and the City’s obligation, if any, to complete the Grant Payments due under this Agreement for the year 2024 shall continue until satisfied, subject to the limitations of this Agreement.

ARTICLE 3. OBLIGATIONS OF TANGER

Section 3.01. Site Redevelopment. Tanger shall redevelop the Site in substantial accordance with the proposal in **Exhibit “A,”** attached hereto and made a part hereof.

Section 3.02. Reinvestment of Grant Payment Funds. During the Term, Tanger shall reinvest funds directly for the benefit of Tanger Outlets, in an amount not less than the amount of Grant Payments paid to Tanger by the City. Funds expended by Tanger after the Effective date, but before receipt of the first Grant Payment shall be credited toward Tanger’s obligation under this paragraph. Tanger shall, with submission of its annual Compliance Certificate (defined below), submit financial records satisfactory to the City’s City Manager verifying the expenditure of funds directly for the benefit of Tanger Outlets.

Section 3.03. Operation of Outlet Center. Tanger shall continuously operate Tanger

Outlets as a regional retail outlet mall of a quality and character equal to or superior to that existing on the Site as of the Effective Date.

Section 3.04. Compliance with Laws. In connection with the renovation and expansion of Tanger Outlets and the Site, Tanger shall comply with all applicable local, state and federal laws, ordinances, statutes, rules, regulations and standards.

ARTICLE 4. ECONOMIC DEVELOPMENT INCENTIVE PROVIDED BY THE CITY

Section 4.01. Grant Payments. Subject to other terms and conditions in this Agreement and Tanger's compliance with this Agreement, the City will make Grant Payments to Tanger in an amount not to exceed \$2,500,000.00.

Section 4.02. Ten-Year Payment Period. Beginning in the calendar year 2016, upon application by Tanger, the City shall make up to ten (10) annual Grant Payments to Tanger, with the last possible Grant Payment being made in 2025.

a. If the total amount of all Grant Payments reaches \$2,500,000.00 before ten (10) annual Grant payments have been made, the Grant Payments from the City shall cease at such time. In such event, Tanger shall continue to be responsible for meeting its performance obligations for the remainder of the Term, including the obligation to submit an annual Compliance Certificate, except for the obligation to request further Grant Payments.

Section 4.03. Reduction in Grant Payments Due to Relocation of Existing Business. In the event that Tanger facilitates the relocation of a business from an existing location in San Marcos to the Site, each annual Grant Payment to Tanger shall be reduced by an amount equal to the sum of sales taxes and ad valorem property taxes attributable to the relocated business at the previous location paid to the City during the calendar year immediately preceding the relocation.

Section 4.04. Time for Requesting and Making Payment. Beginning in 2016, and once each year thereafter, Tanger may request in writing to the City Manager, initiation of Grant Payments, as provided in this Article. The City shall not be required to make a Grant Payment during any applicable calendar year unless and until:

a. Tanger has submitted a compliance certificate, in the form attached hereto as **Exhibit "B"** (the "**Compliance Certificate**"), together with all information the City may request to verify Tanger's compliance with the terms of this Agreement;

b. Additional Property Taxes for the prior calendar year are received by the City from the Hays County Tax Assessor-Collector;

c. Additional Sales Taxes for the prior calendar year are received by the City from the Texas Comptroller of Public Accounts; and

d. funds are appropriated by the San Marcos City Council for the specific purpose of making a Grant Payment under this Agreement as part of the City's ordinary budget and appropriations approval process.

Provided the foregoing conditions have been satisfied and Tanger is, otherwise, in compliance with this Agreement, the City shall pay to Tanger any Grant Payments due within 30 days after the last to occur of the events in subsections (a), (b), (c) and (d) of this Section.

Section 4.05. Subject to Funding. The Grant Payments made and any other financial obligation of the City hereunder shall be paid solely from lawfully available funds that have been budgeted and appropriated each applicable fiscal year during the Term by the City as provided in this Agreement. Under no circumstances shall the City's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Consequently, notwithstanding any other provision of this Agreement, the City shall have no obligation or liability to pay any Grant Payments or other payments unless the City budgets and appropriates funds to make such payments during the City's fiscal year in which such Grant Payment(s) or other payments are payable under this Agreement. If the City fails to appropriate funds for a Grant Payment, Tanger may, at its option, terminate this Agreement effective upon written notice to the City, whereby Tanger is excused from its obligations thereunder in any given year the City fails to approve the expenditure, subject to any unpaid Grant Payment properly due to Tanger for which a lawful appropriation of funds has occurred. **Tanger shall have no other recourse against the City for the City's failure to budget and appropriate funds during any fiscal year to meet the purposes and satisfy its obligations under this Agreement.**

ARTICLE 5. DEFAULT, TERMINATION AND REMEDIES

Section 5.01. Default; Termination or Suspension of Payments. Except as otherwise provided herein, at any time during the Term of this Agreement that Tanger is not in compliance with its obligations under this Agreement, the City may send written notice of such non-compliance to Tanger. If such non-compliance is not cured within 30 days after Tanger's receipt of such notice or, if non-compliance is not reasonably susceptible to cure within 30 days and a cure is not begun within such 30-day period and, thereafter, continuously and diligently pursued to completion on a schedule approved by the City (in either event, a "*Cure*"), then the City may, at its sole discretion and option, terminate this Agreement or withhold Grant Payments otherwise due for the calendar year or years in which the non-compliance occurred and continues.

Section 5.02. Non-Termination Election by City. If the City elects to withhold Grant Payments under this Section rather than to terminate the Agreement, then, upon a Cure by Tanger, Tanger will be eligible to receive Grant Payments in future years (provided it is otherwise in compliance and subject to other limitations of this Agreement) for the remainder of the Term. However, a Grant Payment withheld by the City shall be deemed forfeited by Tanger and the City shall not be liable for retroactive payment of such forfeited Grant Payment. For example, if Tanger is in default and has not effected a Cure in the year 2020, Tanger will not receive a Grant Payment in 2021. Tanger will, however, be eligible to receive a Grant Payment in 2022 if the default is Cured in 2021. Except as to circumstances arising from an event of *force*

majeure, the Term shall not be extended as a result of any Cure period agreed to by the City under this Section.

Section 5.03. Termination for Misrepresentation. Notwithstanding any provision for notice of non-compliance and any opportunity to cure, the City may terminate this Agreement immediately by providing written notice to Tanger if Tanger, its officers or signatories to this Agreement misrepresented or misrepresent any material fact or information: (i) upon which the City relied in entering into this Agreement; (ii) upon which the City relies in making a Grant Payment to Tanger; or (iii) as an inducement for the City to make a Grant Payment to Tanger.

Section 5.04. Other Remedies. Upon breach of any obligation under this Agreement, in addition to any other remedies expressly set forth in this Agreement with respect to such breach, the City may pursue such remedies as are available at law or in equity for breach of contract. Similarly, with regard to violations of applicable ordinances of the City, the City may seek such relief as is available for violation so such ordinances, including fines and injunctive relief.

Section 5.05. Offset. The City may deduct from any Grant Payments, as an offset, any delinquent and unpaid fees, sums of money or other fees, charges or taxes assessed and owed to or for the benefit of the City by Tanger. If such amounts are deducted from any Grant payment, Tanger shall have an opportunity to cure or resolve the underlying delinquency of unpaid sums within 120 after the date of the Grant Payment. If the deficiency is cured within such 120 period, the amount deducted from the Grant Payment will be added back to the next Grant Payment.

Section 5.06. Force Majeure. A *force majeure* event means an event beyond the reasonable control of a party obligated to perform an act or take some action under this Agreement including, but not limited to, acts of God, earthquake, fire, explosion, war, civil insurrection, acts of the public enemy, act of civil or military authority, sabotage, terrorism, floods, lightning, hurricanes, tornadoes, severe snow storms or utility disruption, strikes, lockouts, major equipment failure or the failure of any major supplier to perform its obligations.

ARTICLE 6. INFORMATION

Section 6.01. Information. Tanger shall, at such times and in such form as the City may reasonably request from the City, provide information concerning the performance of the City's obligations under this Agreement.

Section 6.02. Annual Compliance Certification. Beginning in calendar year 2016 and continuing each calendar year thereafter during the Term, Tanger shall submit to the City, on or before March 1 of each such year, a duly executed Compliance Certificate in substantially the form attached as **Exhibit "B"** certifying that Tanger is in full compliance with its obligations under this Agreement or, if not in full compliance, a statement disclosing the nature of any non-compliance and any reasons therefor. After receiving a timely submitted Compliance Certificate, the City shall have 30 days to notify Tanger in writing of any questions that the City may have concerning any of the information in the Compliance Certificate, and Tanger shall diligently work in good faith to respond to such questions to the City's reasonable satisfaction.

Section 6.03. Review of Records. Tanger agrees that the City will have the right to review the business records of Tanger that relate to its performance under this Agreement in order to determine Tanger's compliance with the terms of this Agreement. Such review shall occur at any reasonable time and upon at least seven days' prior notice to Tanger. To the extent reasonably possible, Tanger shall make all such records available in electronic form or otherwise available to be accessed through the internet.

Section 6.04. Public Information. Subject to the requirements of the Texas Public Information Act (the "Act"), or order of a court of competent jurisdiction, Tanger may be required to disclose or make available to the City any information relating to this Agreement. Tanger agrees to cooperate with the City in response to any request for information under the Act or court order. The City will endeavor to provide Tanger with advance notice of any such request for information or court order so that Tanger may seek any relief to which Tanger believes it is entitled. The City's obligations under this Section do not impose a duty upon the City to challenge any court order or ruling of the Texas Attorney General to release information in response to a specific request for information under the Act.

ARTICLE 7. REPRESENTATIONS AND WARRANTIES OF OWNER

Section 7.01. Organization. Tanger is a duly organized, validly existing Limited Partnership, in good standing under the laws of the State of North Carolina and is authorized to conduct business or own real property in the State of Texas. The activities that Tanger proposes to carry on at the Site may lawfully be conducted by Tanger.

Section 7.02. Authority. The execution, delivery and performance by Tanger of this Agreement are within Tanger's powers and have been duly authorized.

Section 7.03. Valid and Binding Obligation. This Agreement is the legal, valid and binding obligation of Tanger, enforceable against Tanger in accordance with its terms except as limited by applicable relief, liquidation, conservatorship, bankruptcy, moratorium, rearrangement, insolvency, reorganization or similar laws affecting the rights or remedies of creditors generally, as in effect from time to time.

Section 7.04. No Defaults. Tanger is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which they are parties or by which they or any of their property is bound that would have any material adverse effect on Tanger's ability to perform under this Agreement.

Section 7.05. Full Disclosure. Neither this Agreement nor any schedule or Exhibit attached hereto in connection with the negotiation of this Agreement contains any untrue statement of a material fact or omits to state any material fact necessary to keep the statements contained herein or therein, in the light of the circumstances in which they were made, from being misleading.

ARTICLE 8. MISCELLANEOUS

Section 8.01. Entire Agreement. This Agreement, including the Recitals and the Exhibits hereto, contains the entire agreement between the Parties with respect to the transactions contemplated herein and supersedes any prior understandings or written or oral agreements between the Parties.

Section 8.02. Amendments. This Agreement may only be amended, altered, or terminated by written instrument signed by all Parties.

Section 8.03. Assignment; Successors. Tanger may assign this Agreement in connection with the sale of its interest in the Site, provided Tanger shall provide the City with at least 30 days' advance notice of such assignment for the assignment to be effective.

Section 8.04. Notices. All notices required by this Agreement will be delivered to the following by certified mail or electronic mail transmission:

City:

City Manager
City of San Marcos
630 East Hopkins
San Marcos, Texas 78666
E-mail: citymanagerinfo@sanmarcostx.gov

Owner:

Tanger Properties Limited Partnership.
3200 Northline Boulevard
Suite 360
Greensboro, North Carolina 27408

Each party will notify the other party in writing of any change in information required for notice under this paragraph.

Section 8.05. Applicable Law and Venue. This Agreement will be construed under the laws of the State of Texas. This Agreement is performable in Hays County, Texas. Mandatory venue for any action under this Agreement will be in the state court of appropriate jurisdiction for the action in Hays County, Texas. Mandatory venue for any matters in federal court will be in the United States District Court for the Western District of Texas.

Section 8.06. No Liability. Tanger agrees that City assumes no liability or responsibility by approving plans, issuing permits or approvals or making inspections related to any matter arising under this Agreement.

Section 8.07. No Waiver of Immunity or Liability. Nothing in this Agreement, and no action of the City under this Agreement, will constitute a waiver of any immunity of the City to suit or to liability or of any limitations on liability granted by law or the Texas Constitution.

Section 8.08. No Joint Venture. It is understood and agreed between the Parties that the City and Tanger, in executing this Agreement, and in performing their respective obligations, are acting independently, and not in any form of partnership or joint venture. **THE CITY ASSUMES NO RESPONSIBILITIES OR LIABILITIES TO ANY THIRD PARTIES IN CONNECTION WITH THIS AGREEMENT, AND TANGER AGREES TO INDEMNIFY, DEFEND AND HOLD THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS FROM ANY SUCH LIABILITIES.**

Section 8.09. Third Party Beneficiaries. This Agreement is for the exclusive benefit of the Parties and no third party may claim any right, title or interest in any benefit arising under this Agreement.

Section 8.10. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective while this Agreement is in effect, such provision shall be automatically deleted from this Agreement and the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby, and in lieu of such deleted provision, there shall be added as part of this Agreement a provision that is legal, valid and enforceable and that is as similar as possible in terms and substance as possible to the deleted provision.

Section 8.11. Estoppel. Upon written request by Tanger, the City shall execute and deliver to Tanger an estoppel certificate certifying as follows: (a) whether this Agreement is unmodified and in full force and effect (or if modified, disclosure of such modifications and whether this Agreement is in full force and effect as modified); (b) whether to the City's knowledge, Tanger is in default under this Agreement; and (c) any other reasonable factual inquiries a party may request regarding this Agreement.

EXECUTED to be effective as of the Effective Date.

[SIGNATURES ON NEXT PAGE]

CITY OF SAN MARCOS:

By: _____
Jared Miller, City Manager

TANGER LIMITED PARTNERSHIP:

By: Tanger GP Trust, its general partner

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENTS

THE STATE OF TEXAS §

§

COUNTY OF HAYS §

This instrument was acknowledged before me on the _____ day of _____, 2015, by Jared Miller, City Manager of the City of San Marcos, in such capacity, on behalf of said municipal corporation.

Notary Public, State of Texas

THE STATE OF _____ §

§

COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 2015, by _____, _____ of Tanger GP Trust., general partner of Tanger Limited Partnership, in such capacity, on behalf of said entity.

Notary Public, State of Texas

EXHIBIT “A”
Renovation and Expansion Proposal
[Attached on next page]

EXHIBIT "B"
Form of Compliance Certificate

CHAPTER 380 ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT
 ANNUAL COMPLIANCE CERTIFICATE

From: _____ To: City of San Marcos
 Attn: City Manager
 630 East Hopkins Street
 San Marcos, TX 78666

Report Date: _____

Reporting Period: _____ to _____

Real Property Improvements:

	Base Tax Year Value	Reporting Period Value of all Improvements	Added Property Tax Value
Taxes Paid			

Sales Taxes:

	Base Year Sales Taxes	Reporting Period Sales Taxes	Added Sales Tax Value
Taxes Paid			

Property Tax Portion of Grant Payment = ___% X Added Property Taxes	Amount
Sales Tax Portion of Grant Payment = ___% X Added Sales Taxes	Amount
Total Grant Payment	Total

Attach receipts and accompanying documentation regarding amount of Tanger's reinvestment of funds for the benefit of Tanger Outlets.

By signature of the authorized representative below, Tanger hereby certifies that it is in full compliance with the Chapter 380 Economic Development incentive Agreement with the City of San Marcos dated July 21, 2015, except as otherwise indicated.

Please explain any non-compliance with Agreement and reasons therefor and measures being taken to cure.

The City Manager may agree to an amendment to this form from time to time, provided such amended form shall be substantially similar in reporting the information necessary to confirm compliance with the Chapter 380 Agreement and to calculate the Grant Payments.

Upon request of the City Manager, Tanger shall supplement this form with such information as is reasonably necessary for the City to audit or verify the information reported by Tanger.

Tanger acknowledges and agrees that it is a recipient of public funds. As such, the City has a special right of access to information related to Tanger's performance under the Chapter 380 Agreement. Certain information of Tanger may be subject to disclosure under the Texas Public Information Act. While the City may notify Tanger of certain requests for information from third parties, the City shall have no obligation to assert exceptions to disclosure of such information to the Texas Attorney General or other authority having jurisdiction on behalf of Tanger.

I, _____[Insert name and title], certify that the foregoing information is true and correct and that Tanger has complied with all terms and conditions of the Chapter 380 Agreement.

[Name and Title]

Date

Email: _____

Phone: _____