

RESOLUTION NO. 2013-11-___ (R)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, APPROVING MODIFICATIONS TO THE GUARANTOR'S OBLIGATIONS UNDER A CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AND AGREEMENT WITH 380 TOWNE CROSSING, L.P.; AUTHORIZING THE CITY MANAGER TO EXECUTE A FIRST AMENDMENT TO THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of McKinney, Texas, (the "City") desires to amend the Chapter 380 Economic Development Program and Agreement for 380 Towne Crossing, L.P. (the "Agreement") by the execution of a First Amendment to the Chapter 380 Economic Development Agreement for 380 Towne Crossing, L.P. (the "First Amendment").

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, THAT:

- Section 1. The foregoing recitals are hereby found to be true and correct legislative and factual findings of the City of McKinney, Texas, and are fully incorporated into the body of this Resolution.
- Section 2. The City Council of the City of McKinney, Texas does hereby approve the modifications of the guarantor's obligations under the Agreement, as set forth in the First Amendment by and between the City of McKinney, Texas, and J.P. Weber, d/b/a Weber Company, a Texas corporation.
- Section 3. The City Manager is hereby authorized to execute the First Amendment, a copy of which is attached hereto as Exhibit A.
- Section 4. This Resolution shall be immediately effective upon its passage.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS ON THE 5th DAY OF NOVEMBER, 2013.

CITY OF MCKINNEY, TEXAS

BRIAN LOUGHMILLER
Mayor

ATTEST:

SANDY HART, TRMC, MMC
City Secretary
BLANCA I. GARCIA
Assistant City Secretary

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney

EXHIBIT A

**FIRST AMENDMENT
TO THE
CHAPTER 380 ECONOMIC DEVELOPMENT
PROGRAM AND AGREEMENT FOR
380 TOWNE CROSSING, L.P.**

WHEREAS, 380 TOWNE CROSSING, L.P., a Texas limited partnership (hereinafter “Developer), and **CITY OF MCKINNEY, TEXAS**, a Texas home rule city (hereinafter “City”), executed that certain economic development agreement effective as of November 15, 2006 (hereinafter “Agreement”), whereby the assigned payments under such agreement were guaranteed by **J.P. Weber, d/b/a Weber & Company**, a Texas corporation (hereinafter “Guarantor); and

WHEREAS, the parties thereto have determined that in order to carry out the original intent of the parties a modification of the obligations of the Guarantor is required; and

WHEREAS, the City has agreed to withdraw any prior notices of default and modify the terms of the Guaranty provisions of the Agreement to effectuate the foregoing.

NOW, THEREFORE, for and in consideration of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City, Developer, and Guarantor agree as follows:

Section 1. Notice of Default Withdrawn. The Notice of Default issued by the City and dated July 29, 2013 is withdrawn.

Section 2. Guaranty Amended. The first paragraph of Section 8 of the Agreement is hereby amended and shall hereinafter read as follows:

“Section 8. Guaranty

Guarantor agrees to indemnify the City against any loss, cost or expense, including, without limitation, the liquidated damages set forth herein and reasonable attorneys’ fees and costs, incurred by the City, caused by, relating to or in connection with or arising from this Agreement. Guarantor further agrees that, in the event that (i) the amount of sales tax revenue received by City under Section 3 does not equal \$5,000,000 by February 1, 2015, and (ii) the City has made the Lump Sum Payment described in Section 3 hereof, Guarantor shall indemnify and pay the City an amount equal to \$5,000,000 minus the amounts received by City under (i) above. This guaranty is a continuing, absolute and unconditional guaranty and shall remain in full force and effect until the termination of this Agreement.”

Section 3. Term Amended. Section 1 of the Agreement is hereby amended and shall hereinafter read as follows:

“Section 1. Term

This Agreement shall be effective from the Effective Date until March 31, 2015, unless terminated sooner under the provisions hereof.”

IN WITNESS WHEREOF, the City, Developer and Guarantor have executed this Agreement to be Effective as of November 5, 2013.

DEVELOPER:

380 TOWNE CROSSING, L.P.

a Texas limited partnership

By: MTC McKinney Development, Inc.,
a Texas corporation,
Its Authorized General Partner

By: _____
Name: John P. Weber, President
Date signed: _____

CITY:

THE CITY OF MCKINNEY, TEXAS

a Texas municipal corporation

By: _____
Name: _____
Title: _____
Date signed: _____

GUARANTOR:

J.P. Weber, d/b/a WEBER COMPANY,

a Texas corporation

By: _____
Name: John P. Weber, President
Date signed: _____

ATTEST:

SANDY HART, TRMC, MMC
City Secretary
BLANCA I. GARCIA
Assistant City Secretary

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney

PREPARED IN THE OFFICES OF:

BROWN & HOFMEISTER, L.L.P.
740 E. Campbell Road, Suite 800
Richardson, Texas 75081
214/747-6100
214/747-6111 Fax