

EXHIBIT

"A"

ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

This Economic Development Program Agreement ("**Agreement**") is entered into this ____ day of _____, 2023, by and between the **City of Round Rock, Texas**, a Texas home rule municipal corporation ("**City**"), and **EastGroup Properties, L.P.** a Delaware Limited Partnership, ("**EastGroup**").

WHEREAS, the City has adopted Resolution No. _____, attached as Exhibit A ("**City Resolution**"), establishing an economic development program, and authorizing the Mayor to enter into this Agreement with EastGroup in recognition of the positive economic benefits to the City through EastGroup's decision to demolish an existing building located at 350 Texas Ave., and to replace it with two light industrial buildings; and

WHEREAS, the purpose of this Agreement is to promote economic development as contemplated by Chapter 380 of the Texas Local Government Code whereby EastGroup intends to construct the two light industrial buildings, which will house new primary jobs; and

WHEREAS, the City agrees to provide a performance-based Economic Incentive Payment ("**EIP**") (as defined below);

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 EastGroup 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 City Resolution, and constitutes a valid and binding obligation of the City in the event EastGroup proceeds with the demolition of the existing building and replacing it with two light industrial buildings.
2. **Definitions.**
 - 2.1 **"Economic Incentive Payment" ("EIP")** means the amount paid by the City to EastGroup under the Program.
 - 2.2 **"Effective Date"** is the date this Agreement is executed to be effective by the City and EastGroup.
 - 2.3 **"Program"** means the economic development program established by the City pursuant to Chapter 380 of the Texas Local Government Code and under the City Resolution to promote local economic development and stimulate business and commercial activity within the City.
 - 2.4 **"Property"** means the parcel of land located at 350 Texas Ave., Round Rock, TX 78664.

2.5 **“Recapture Liability”** means the total amount of the EIP that is paid as result of this Agreement that are subject to recapture by the City from EastGroup in the event of EastGroup’s default.

3. **Intention of Parties.** The City Council of Round Rock has previously determined that one of its priority goals is to encourage economic development within the City. To further these goals, the City is willing to provide an EIP to assist EastGroup in the demolition of the existing building on the Property and replacing it with two light industrial buildings.

4. **Term.** This Agreement shall become enforceable upon its Effective Date and shall terminate on December 31, 2026.

5. **Rights and Obligations of EASTGROUP.**

5.1. Demolition of Existing Building. EastGroup agrees to demolish the existing building on or before March 31, 2024. EastGroup agrees that the demolition will cost at least \$125,000. EastGroup agrees to provide the City with receipts and/or other documentation to show that it has spent at least \$125,000 for the demolition.

5.2. Construction of New Buildings. EastGroup agrees to replace the existing building with a minimum of 100,000 SF of light industrial space on or before December 31, 2026.

5.3. Clawback. In the event that EastGroup fails to comply with any of the actions as described in Sections 5.1 and 5.2, and such failure continues for a period of thirty (30) days after EastGroup’s receipt of written notice of such failure from the City, EastGroup will immediately pay to the City an amount equal to, but not to exceed, the Recapture Liability.

6. **Economic Incentive Payments.**

6.1 In consideration, and subject to EastGroup’s compliance with this Agreement, the City agrees to pay an EIP to EastGroup equal to \$125,000, or the actual cost of the demolition, whichever is less.

6.2. Schedule for EIP. The City shall, subject to EastGroup’s satisfaction of its obligations set forth herein, make an EIP to EastGroup within sixty (60) days after the documentation described in Sec. 5.1 has been provided to and accepted by the City.

6.3. EIP Subject to Future Appropriations. This Agreement shall not be construed as a commitment, issue or obligation of any specific taxes or tax revenues for payment to EastGroup. The EIP by the City under this Agreement is subject to the City’s appropriation of funds for such payments in the budget year for which they are made. The EIP to be made to EastGroup, 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 that the City does not appropriate funds in any fiscal year for the EIP due under this Agreement, such failure shall not be considered a default under Section 7.3, and the City shall not be liable to EastGroup for such EIP, however, the City shall extend this Agreement for another year(s), until EastGroup has received all of the EIP provided for herein. In addition, EastGroup shall have the right but not the obligation to rescind this Agreement. To the extent there is a conflict between this paragraph and any other language or covenant in this Agreement, this paragraph shall control.

- 6.4. EIP Recapture. In the event the City terminates this Agreement as a result of EastGroup's default that is not cured within thirty (30) days after EastGroup's receipt of written notice of such failure from the City, the City may recapture and collect from EastGroup the Recapture Liability. EastGroup shall pay to the City the Recapture Liability within thirty (30) days after the City makes demand for same, subject to any and all lawful offsets, settlements, deduction, or credits to which EastGroup may be entitled. Notwithstanding anything herein to the contrary, such Recapture Liability shall not exceed, in the aggregate, an amount equal to the EIP that was paid pursuant to this Agreement from the Effective Date to the date of termination (together with interest thereon to be charged at the statutory rate for delinquent taxes as determined by Section 33.01 of the Property Tax Code of the State of Texas, but without the addition of a penalty). The City shall have all remedies for the collection of the Recapture Liability as provided generally in the Tax Code for the collection of delinquent property taxes.

7. Miscellaneous.

- 7.1. Mutual Assistance. The City and EastGroup will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement.
- 7.2. Representations and Warranties. The City represents and warrants to EastGroup 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. EastGroup represents and warrants to the City that it has the requisite authority to enter into this Agreement.
- 7.3. Default. If either the City or EastGroup should default in the performance of any obligations of this Agreement, the other party shall provide such defaulting party with written notice of such default and thirty (30) days' opportunity to cure, 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, EastGroup shall have the right to pursue any remedy at law or in equity for the City's breach. If EastGroup remains in default after notice and opportunity to cure, City shall have the right to pursue any remedy at law or in equity for EastGroup's breach, but only up to an amount equal to the Recapture Liability.

- 7.4.Attorney's Fees. In the event any legal action or proceeding is commenced in a court of competent jurisdiction between the City and EastGroup 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.
- 7.5.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 EastGroup.
- 7.6.Binding Effect. This Agreement shall be binding on and inure to the benefit of the parties, their respective successors, and assigns.
- 7.7.Assignment. EastGroup may not assign all or part of its rights and obligations to a third party without the express written consent of the City provided, however, that this Agreement may be assigned by either party without the consent of the other to an affiliate or to any third party who succeeds to substantially all of its business or assets.
- 7.8.Amendment. This Agreement may be amended by the mutual written agreement of the parties.
- 7.9.Termination. In the event EastGroup elects not to demolish the building as contemplated by this Agreement, EastGroup 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.
- 7.10. 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:

If to City: City of Round Rock
 221 E. Main Street
 Round Rock, TX 78664
 Attn: City Manager
 Phone: (512) 218-5400
 Email: lhadley@roundrocktexas.gov

With a required copy to:

 Sheets & Crossfield
 309 E. Main Street
 Round Rock, TX 78664
 Attn: Stephanie L. Sandre
 Phone: (512) 255-8877
 Email: stephanie@scrllaw.com

If to EastGroup: EastGroup Properties, L.P.
Attn: Asset Manager
6565 N. MacArthur Blvd., Suite 255
Irving, TX 75039
Phone: (972) 386-8700
Email: david.hicks@eastgroup.net

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

- 7.11. 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 Williamson County, Texas.
- 7.12. 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.
- 7.13. 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.
- 7.14. No Third-Party Beneficiaries. This Agreement is not intended to confer any rights, privileges, or causes of action upon any third party.
- 7.15. Force Majeure. Except as otherwise provided herein, an equitable adjustment shall be made for delay or failure in performing if such delay or failure is caused, prevented, or restricted by conditions beyond that Party's reasonable control (a "*force majeure* event"). A *force majeure* event for the purposes of this Agreement shall include, but not be limited to, acts of God, fire; explosion, vandalism; storm or similar occurrences; orders or acts of military or civil authority; litigation; changes in law, rules, or regulations outside the control of the affected Party; national emergencies or insurrections; riots; acts of terrorism; or supplier failures, shortages or breach or delay. Except as otherwise expressly provided, herein, there shall be an equitable adjustment allowed for performance under this Agreement as the result of any event of *force majeure*.
- 7.16. 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 Facility or the design, construction, or operation of any portion of the Facility.

EXECUTED to be effective as of the _____ day of _____, 2023.

CITY OF ROUND ROCK, TEXAS

By: _____
Craig Morgan, Mayor

APPROVED as to form:

Stephanie L. Sandre, City Attorney

EASTGROUP PROPERTIES, L.P.

**By: EastGroup Properties General Partners,
Inc., a Delaware corporation, its sole general
partner**

By:  _____
David Hicks, its Vice President


By:  _____
Reid Dunbar, its Senior Vice President

EXHIBIT "A"

RESOLUTION NO. R-_____

WHEREAS, the City Council has determined that one of its priority goals is to encourage economic development within the city of Round Rock; and

WHEREAS, EastGroup Properties, L.P. ("EastGroup") intends to demolish an existing building located at 350 Texas Ave., and to replace it with two light industrial buildings; and

WHEREAS, the Council wishes to promote economic development as contemplated by Chapter 380 of the Texas Local Government Code whereby EastGroup demolishes the building and replaces it with two light industrial buildings; and

WHEREAS, §380.001 Local Government Code provides that a municipality may establish an economic development program ("Program") to promote local economic development and to stimulate business and commercial activity in the municipality, and

WHEREAS, the City Council has determined that the Program described in Exhibit "A" will encourage economic development within the City and will also meet the goals set forth in said §380.001,

NOW THEREFORE,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROUND ROCK, TEXAS,

That the City offers to EastGroup a §380.001 Program whereby the City will grant an Economic Incentive Payment ("EIP"), and

BE IT FURTHER RESOLVED

That the offer of the Program shall be as generally outlined in Exhibit "A" attached hereto and incorporated herein for all purposes.

The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

RESOLVED this _____ day of _____, 2023.

CRAIG MORGAN, Mayor
City of Round Rock, Texas

ATTEST:

Meagan Spinks, City Clerk

EXHIBIT A TO RESOLUTION

ECONOMIC DEVELOPMENT PROGRAM

The terms of the §380.001 Economic Development Program to be offered to EastGroup Properties, L.P. ("EastGroup") in exchange for EastGroup demolishing the existing building located at 350 Texas Ave., and to replace it with two light industrial buildings that are as generally outlined below:

1. EASTGROUP's intentions and obligations:
 - 1.1. EastGroup will demolish the existing building located at 350 Texas Ave., Round Rock, Texas on or before March 31, 2024
 - 1.2. EastGroup intends to spend at least \$125,000 for the demolition of the existing building, and to replace the existing building with a minimum of 100,000 SF of light industrial space on or before December 31, 2026.
 - 1.3. EastGroup agrees that it will comply with the City's development approval processes and shall construct and install the improvements consistent with City ordinances, development regulations and requirements.
2. City's obligations:
 - 2.1. In consideration of EastGroup's compliance with the aforesaid requirements, the City agrees to grant an Economic Incentive Payment to EastGroup in the amount of \$125,000, or the actual cost of the demolition, whichever is less.
3. The terms and provisions of this Program will be set out in more detail in the Economic Development Program Agreement of even date herewith.