

**RESOLUTION NO. 2012- 33 R**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, APPROVING A CHAPTER 380 ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT BETWEEN THE CITY OF SAN MARCOS, TEXAS AND HAYS COUNTY DEVELOPERS, LTD. PROVIDING FOR AN ECONOMIC DEVELOPMENT INCENTIVE IN THE FORM OF REFUNDS OF A PERCENTAGE OF AD VALOREM TAXES ON NEW MEDICAL AND PROFESSIONAL OFFICE BUILDINGS AT 1251 SADLER DRIVE OVER A PERIOD OF THREE YEARS PER BUILDING AS FOLLOWS: 100 PERCENT FOR THE FIRST BUILDING, 75 PERCENT FOR THE SECOND BUILDING AND 50 PERCENT FOR THE THIRD BUILDING; AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT; AND DECLARING AN EFFECTIVE DATE.**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:**

**PART 1.** The attached Chapter 380 Economic Development Incentives Agreement between the City of San Marcos, Texas and Hays County Developers, Ltd. (the “Agreement”) is hereby approved.

**PART 2.** The City Manager is authorized to execute the Agreement on behalf of the City.

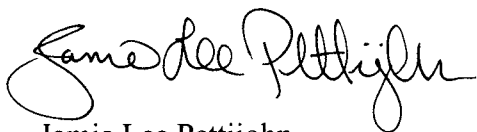
**PART 3.** This Resolution shall be in full force and effect immediately from and after its passage.

**ADOPTED** on April 17, 2012.



Daniel Guerrero  
Mayor

Attest:



Jamie Lee Pettijohn  
City Clerk

## **CHAPTER 380 ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT**

As of April 17, 2012 (the “Effective Date”) this agreement (the “Agreement”) is entered into between the City of San Marcos, Texas (the “City”), a Texas municipal corporation, and Hays County Developers, Ltd. (“Owner”). The City and Owner may also be collectively referred to as the “Parties” or individually as a “Party”.

### **PART 1. RECITALS**

**Section 1.01.** The City is authorized under Chapter 380 of the Texas Local Government Code (“Chapter 380”) and by the City’s Economic Development Incentives Policy (the “Policy”) to offer certain economic development incentives for public purposes, including the promotion of local economic development and the stimulation of business and commercial activity in the City.

**Section 1.02.** Owner owns a 4.46 acre, more or less, tract of land at 1251 Sadler Drive, San Marcos, Hays County, Texas (the “Property”).

**Section 1.03.** The Owner intends to construct “Class A” medical and professional office lease space consisting of three building totaling at least 54,000 square feet according to plans and specifications described in this Agreement below (the “Project”).

**Section 1.04.** The City has determined that providing an economic development grant to the Owner for the Project will promote local economic development and stimulate business and commercial activity in the City.

**Section 1.07.** For the reasons stated in these Recitals and in consideration of the mutual benefits to and promises of the Parties set forth below, the Parties want to enter into this Agreement and agree to the terms and conditions set forth in this Agreement.

## **ARTICLE II DEVELOPER'S OBLIGATIONS**

**Section 2.01.** Owner shall construct the Project on the Property to include three professional office buildings, each at least 18,000 square feet in size in three phases for lease to medical and professional tenants. The Project shall conform to the plans and specifications described in Exhibit "A," attached hereto and made a part hereof. The Project shall meet the standards for "Class A" office space as that term is commonly understood by Realtors and others in the real estate development community in the San Marcos region, to include office buildings competing for premier office users with rents above average for the area and having high quality standard finishes, state of the art systems, exceptional accessibility and a definite market presence.

**Section 2.02.** Subject to any events of force majeure, Owner shall commence construction of the first building of the Project on or before June 1, 2012. The Owner shall endeavor to commence construction of the second building on or before October 1, 2013 and construction of the third building on or before March 1, 2015. Subject to any events of force majeure, Construction of the first building shall be completed on or before December 31, 2012. The Owner will endeavor to complete construction of the second and third buildings with commercially reasonable diligence. Construction of a building will be deemed complete upon issuance by the City of a certificate of occupancy for the building.

**Section 2.03.** Owner agrees to ensure that all of the construction related to the Project will conform to all applicable City ordinances, standards and regulations and other applicable state and federal laws.

**ARTICLE III  
GRANT PAYMENTS FROM THE CITY**

**Section 3.01. Grant Payments.** Subject to the requirements and limitations of this Article, other terms and conditions of this Agreement and Owner's compliance with this Agreement, the City will make payments to the Owner in the manner set forth in this Article.

**Section 3.02. Grant Payment Amounts and Limits.** Subject to the Grant Payment Term defined under Section 3.04, the City will refund to Owner once per year over a period of up to three years per building amounts equal to the following percentages of the City's share of ad valorem real property taxes assessed and paid annually on each completed building related to the Project as follows (the "Grant Payments"):

- a. 100 percent of the City's share of ad valorem real property taxes on the first building completed;
- b. 75 percent of the City's share of ad valorem real property taxes on the second building completed; and
- c. 50 percent of the City's share of ad valorem real property taxes on the third building completed.

The City shall make Grant Payments attributable to a completed building once per year for up to three years from the first full calendar year after the building is completed. As the second and third buildings are completed, there may be overlapping Grant Payment periods. As any three year payment period for a completed building expires, the Grant Payments connected to such building shall terminate while other Grant Payments for newer building may continue. For example, if the first building is completed in the year 2013, the Owner is eligible to receive Grant Payments equal to the applicable percentage of taxes attributable to such building in 2014, 2015 and 2016. If the second building is completed in 2014, the Owner is eligible to receive

Grant Payments in 2015, 2016 and 2017 although the Grant Payments for the first building ended in 2016.

**Section 3.03. Grant Payments Limited to Improvement Value.** The Grant Payments are limited to taxes associated with the value of building improvements only and will not include the taxes related to the land value of the Property or any increase in the land value of the Property. The Grant Payments will not include amounts for taxes related to any materials or other personal property.

**Section 3.04. Limited Six Year Payment Period.** Owner may only receive Grant Payments from the City for up to six calendar years beginning with the first full calendar year after the first building is completed (the “Grant Payment Term”). If the three year grant payment period applicable to any completed building related to the Project would extend beyond the Grant Payment Term, the City’s obligation to make Grant Payments for such building shall, nonetheless, end with the expiration of the Grant Payment Term. For example, if the sixth calendar year after the first building is completed is 2019 and the third building is completed in 2018, the City would only be obligated to make one Grant Payment for the building based on the taxes assessed and paid for the year 2019. However, because the Owner would have until January 30 of 2020 to pay the taxes owed for 2019, the Owner would be allowed to submit its request for the 2019 Grant Payment in 2020 and the City would be obliged to make the Grant Payment, subject to the requirements and limitations in this Agreement.

**Section 3.05. Time for Payment.** The City shall not be required to make a Grant Payment during any applicable fiscal year of the City unless and until:

- (a) the City’s share of ad valorem taxes attributable to a building for the applicable year are paid by the Owner; and

(b) funds equivalent in value to the applicable percentage in Section 3.02 are appropriated for the specific purpose of making a Grant Payment as part of the City's ordinary budget and appropriations approval process.

Provided the events in subsections (a) and (b) of this Section have been satisfied and Owner is otherwise in compliance with this Agreement, the City shall pay to Owner any Grant Payments due for the applicable fiscal year of the City within 60 days after the submission by Owner of a written request for payment, together with proof of full payment of the City's share of ad valorem taxes for the applicable year.

#### **ARTICLE IV REPRESENTATIONS AND WARRANTIES OF OWNER**

The Owner represents and warrants to the City, as follows:

**Section 4.01. Organization.** The Owner is a business entity duly organized, validly existing and in good standing under the laws of the state of formation and is authorized to conduct business in the State of Texas and to conduct the activities under this Agreement.

**Section 4.02. Authority.** The execution, delivery and performance by the Owner of this Agreement are within the Owner's powers and have been duly authorized by all necessary action of the Owner.

**Section 4.03. No Defaults.** The Owner is current in its obligation to pay taxes to the City, and is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement with the City.

**Section 4.04. 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 V  
PERSONAL LIABILITY OF PUBLIC OFFICIALS;  
LIMITATIONS ON CITY OBLIGATIONS**

**Section 5.01. Personal Liability of Public Officials.** No employee or elected official of the City shall be personally responsible for any liability arising under or growing out of this Agreement.

**Section 5.02. Limitations on City Obligations.** 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 year during the Grant Payment 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.

**Section 5.03. No Recourse.** Owner shall have no recourse against the City for failing to budget and appropriate funds during any fiscal year to meet the purposes and obligations under this Agreement.

**ARTICLE VI  
INFORMATION**

**Section 6.01 . Information.** The Owner shall, at such times and in such form as City may reasonably request from the Owner, provide information concerning the performance of the Owner's obligations under this Agreement or other information necessary to support a request for a Grant Payment.

**Section 6.02.** At all times until the City’s rights to declare default against Owner have expired, the City will have access to the Property and the Project upon reasonable prior notice for the purpose of inspecting them to ensure that the Project is constructed, installed, maintained and used in accordance with the terms of this Agreement.

**ARTICLE VII  
DEFAULT, TERMINATION AND REMEDIES**

**Section 7.01.** The City Manager may declare a default under this Agreement if Owner:

1. fails to complete construction of the first building of the Project by the deadline in Section 2.02 above;
2. refuses, fails or neglects to comply with any of the terms of this Agreement; or
3. allows ad valorem taxes on the Property or improvements thereon or any other taxes, fees or charges owed to the City to become delinquent.

**Section 7.02. Default.** If the City Manger determines that Owner is in default of this Agreement, the City may send Owner notice of such default. If such default is not either cured within 60 days after Owner’s receipt of such notice or, if non-compliance is not reasonably susceptible to cure within 60 days, a cure begun within such 60-day period and thereafter continuously and diligently pursued to completion (in either event, a “Cure”), then the City may, at its option, cease making Grant Payments until such Cure occurs or terminate this Agreement. The Grant Payment Term shall not be extended as a result of any cure period under this section.

**Section 7.03.** The remedies set forth in this Agreement may be used in conjunction with one another or separately, and together with any other remedies at law or in equity available to the City. Any failure by the City to enforce this Agreement with respect to one or more defaults by Owner will not waive the City’s ability to enforce the Agreement after that time.

**Section 7.04. Owner’s Option to Terminate.** If the City fails to budget and appropriate



funds for Grant Payments under this Agreement for reasons other than the Owner's non-compliance with this Agreement during any fiscal year of the City during the Term, the Owner, at its option, may terminate this Agreement by providing written notice thereof to the City. If the Owner elects to terminate the Agreement under this Section, the Owner and the City shall each be released of all further obligations under this Agreement, except that the City shall pay to the Owner any outstanding and unpaid Grant Payments properly due to the Owner prior to the date of termination for which the City has budgeted and appropriated funds during any previous fiscal year.

**Section 7.05. Offset.** The City may deduct from any Grant Payments, as an offset, any delinquent and unpaid fees, sums of money or ad valorem, sales or other taxes assessed and owed by the Owner to or for the benefit of the City.

**Section 7.06. Force Majeure.** Force majeure 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 VIII MISCELLANEOUS**

**Section 8.01. Entire Agreement.** This Agreement, including any exhibits hereto, contains the entire agreement between the parties with respect to the transactions contemplated herein.

**Section 8.02. Further Actions.** The City and the Owner will do all things reasonably necessary or appropriate to carry out the objectives, terms and provisions of this Agreement and

to aid and assist each other in carrying out such objectives, terms and provisions, provided that the City shall not be required to spend any money or have further obligations other than to reimburse the Owner pursuant to the terms of this Agreement.

**Section 8.03. Amendments.** This Agreement may only be amended, altered, or terminated by written instrument signed by all parties.

**Section 8.04. Assignment.** Owner may not assign any of its rights, or delegate or subcontract any of its duties under this Agreement, in whole or in part, without the prior written consent of the City.

**Section 8.05. Waiver.** No term or condition of this Agreement shall be deemed to have been waived, nor shall there be any estoppel to enforce any provision of this Agreement, except by written instrument of the party charged with such waiver or estoppel.

**Section 8.06. Notices.** Any notice, statement and/or communication required and/or permitted to be delivered hereunder shall be in writing and shall be mailed by first-class mail, postage prepaid, or delivered by hand, messenger, telecopy, or reputable overnight carrier, and shall be deemed delivered when received at the addresses of the parties set forth below, or at such other address furnished in writing to the other parties thereto:

**Owner:** Hays County Developers, Ltd.  
2110A Boca Raton Drive  
Suite 201  
Austin, Texas 78747  
Attn: Robert W. McDonald III  
Telephone: 512.280.5353  
Facsimile: 512.280.3877

**City:** City of San Marcos  
630 E. Hopkins  
San Marcos, Texas 78666  
Attn: City Manager  
Telephone: 512.393.8101  
Facsimile: 512.396.4656

**Section 8.07. Applicable Law and Venue.** This Agreement is made, and shall be construed and interpreted under the laws of the State of Texas. Venue for any legal proceedings shall lie in State courts located in Hays County, Texas. Venue for any matters in federal court will be in the United States District Court for the Western District of Texas.

**Section 8.08. Severability.** In the event any provision of this Agreement is illegal, invalid, or unenforceability under the applicable present or future laws, then, and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision that is found to be illegal, invalid, or unenforceable a provision be added to this Agreement which is legal, valid and enforceability and is a similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

**Section 8.09. Third Parties.** The City and the Owner intend that this Agreement shall not benefit or create any right or cause of action in or on behalf of any third-party beneficiary, or any individual or entity other than the City and the Owner or permitted assignees of the City and Owner, except that the indemnification and hold harmless obligations by the Owner provided for in this Agreement shall inure to the benefit of the indemnitees named therein.

**Section 8.10. No Joint Venture.** Nothing contained in this Agreement is intended by the parties to create a partnership or joint venture between the Parties, and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint either party as an agent of the other for any purpose whatsoever. Except as otherwise specifically provided herein, neither party shall in any way assume any of the liability of the other for acts of the other or obligations of the other.

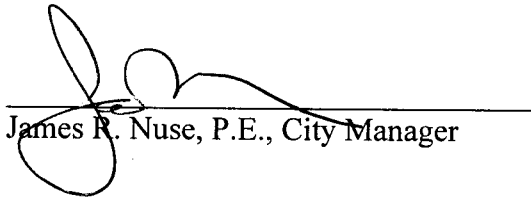
**Section 8.11. Counterparts.** This Agreement may be executed in multiple counterparts,

each of which shall be considered an original, but all of which constitute one instrument.

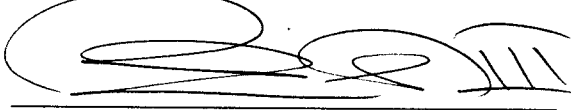
**Section 8.12. Nondiscrimination.** Owner agrees to ensure that no discrimination will occur in the provision of services or in employment practices at the Project on the basis of race, creed, color, national origin, sex or disability.

**EXECUTED** in duplicate originals to be effective as of the Effective Date.

**CITY OF SAN MARCOS, TEXAS**

By:   
James R. Nuse, P.E., City Manager

**HAYS COUNTY DEVELOPERS, LTD.**

By:   
Robert W. McDonald III, President

**EXHIBIT "A"**  
Project Plans and Specifications  
*(following pages)*

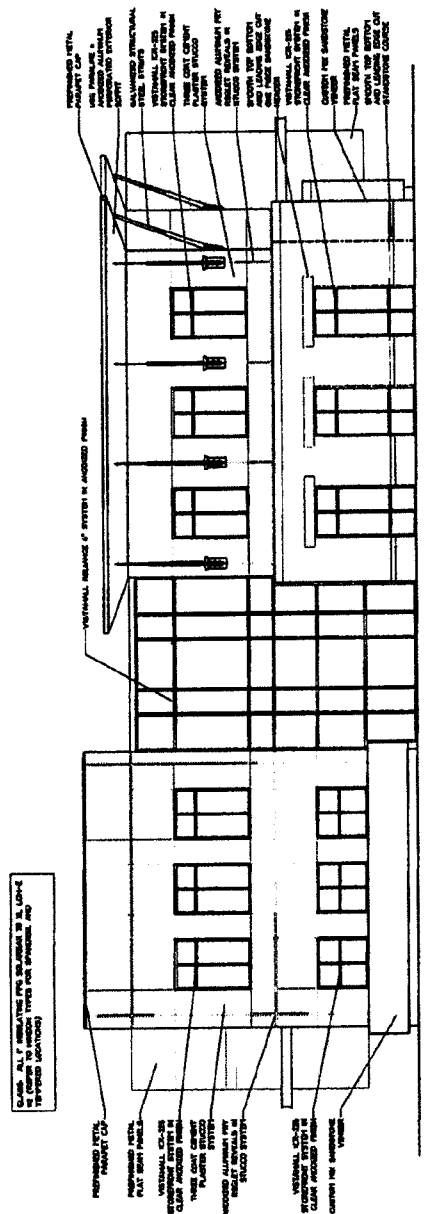


Scdler East Medical Office Building  
San Marcos, Texas

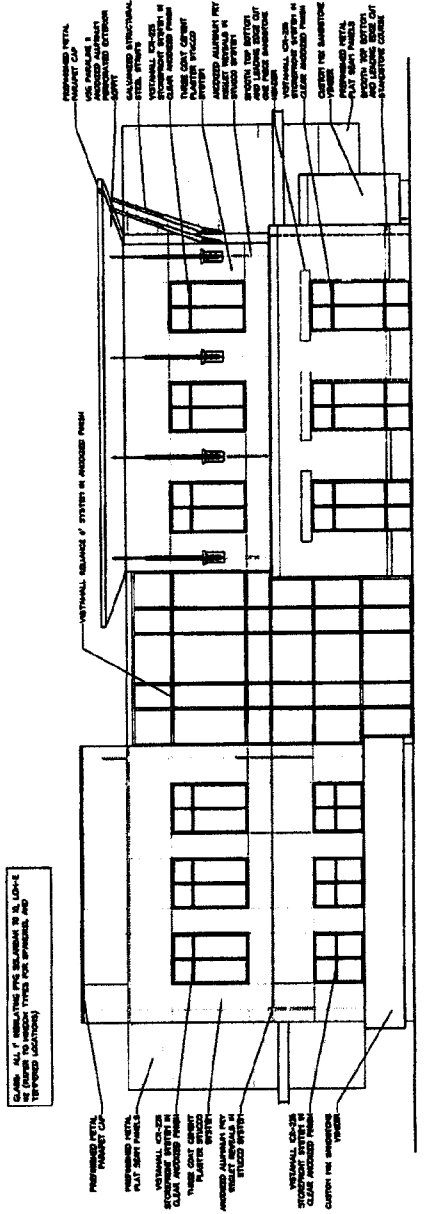


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**2** WEST ELEVATION  
 (SEE WEST)



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 (SEE WEST)



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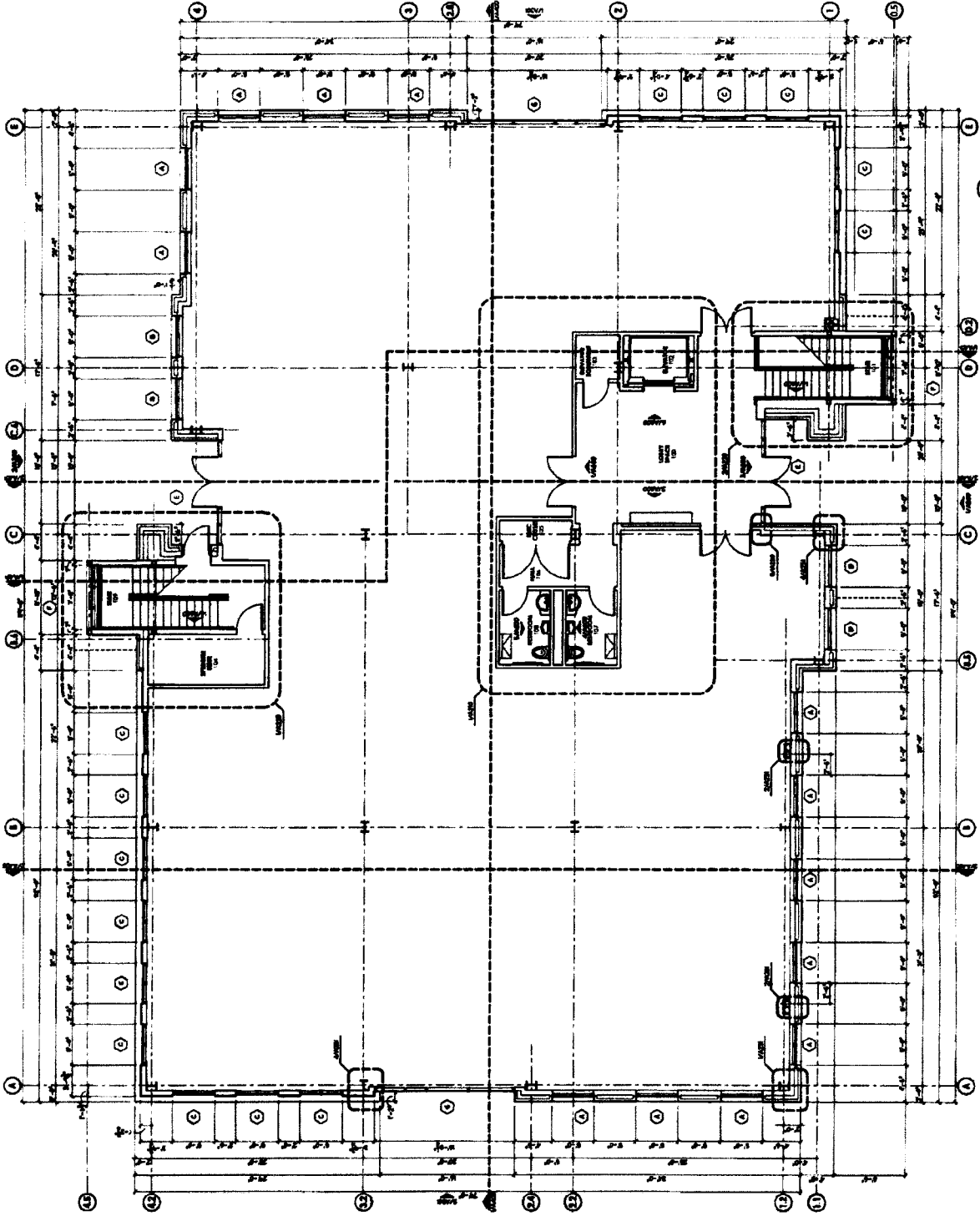
Real Estate  
Investment &  
Development

SADLER EAST  
Building 1  
1231 Sadler Drive  
San Marcos, Texas  
78667-1234

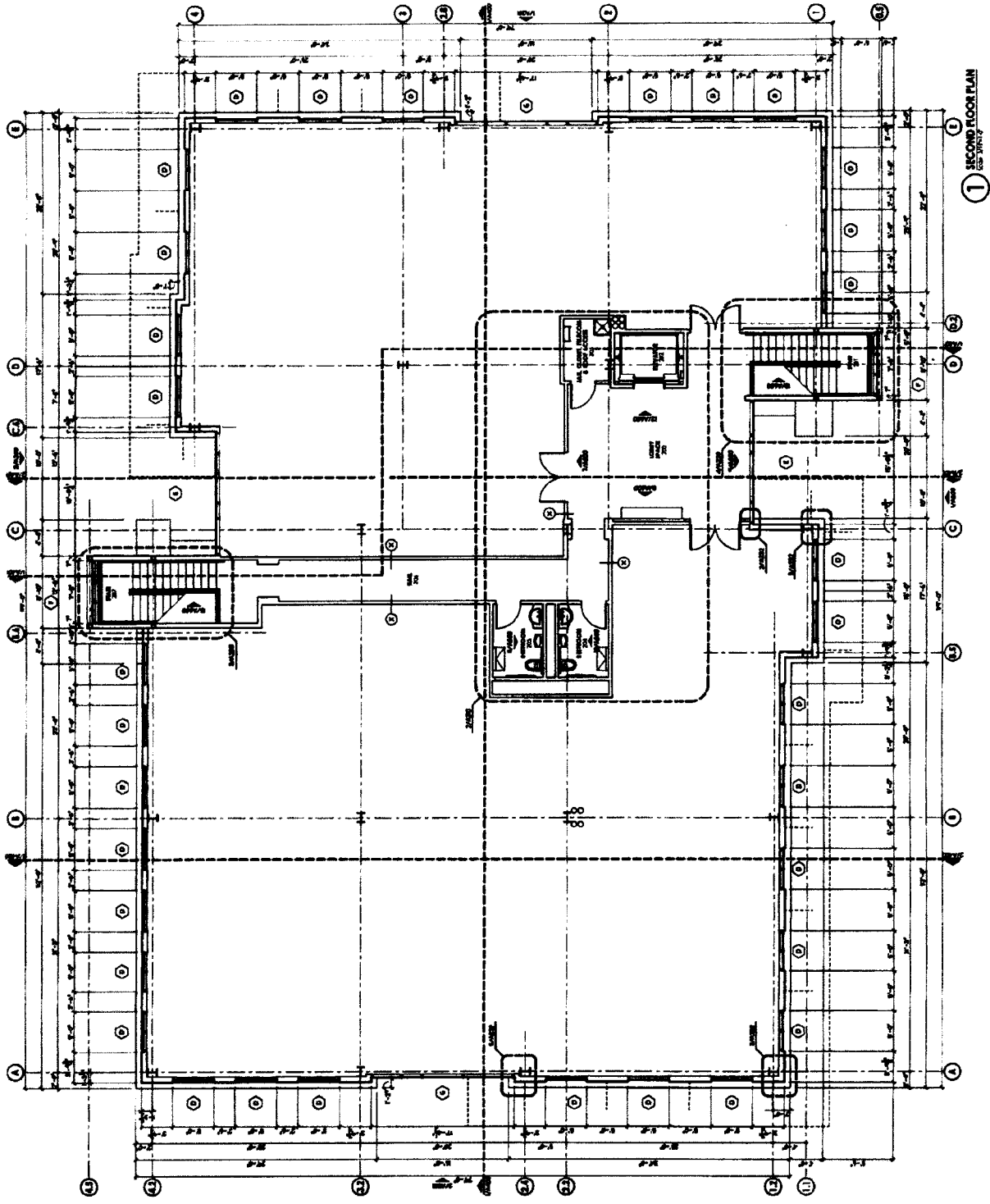
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SCALE: 1/8" = 1'-0"

PROJECT: 1231  
DRAWN BY: JG  
CHECKED BY: JG  
DATE: 02/23/12  
FILE: 1231-01-01  
PATH: 1231-01-01

A200  
First Floor  
Plan



1 FIRST FLOOR PLAN  
DATE: 02/23/12



1 SECOND FLOOR PLAN  
CONTRACT