

AN ORDINANCE 2010-04-01-0270

**AMENDING THE FINAL PROJECT PLAN, FINAL FINANCING PLAN,
AND DEVELOPMENT AGREEMENT FOR THE TAX INCREMENT
REINVESTMENT ZONE NUMBER NINE, CITY OF SAN ANTONIO,
TEXAS, KNOWN AS THE HOUSTON STREET TIRZ.**

* * * * *

WHEREAS, in accordance with the Tax Increment Financing Act, Texas Tax Code, Chapter 311, the City of San Antonio, Texas created Tax Increment Reinvestment Zone Number Nine, City of San Antonio, Texas, known as the Houston Street TIRZ, created a Board of Directors for the Zone and authorized the Board to exercise all the rights, powers, and duties as provided to such board under the Act; and

WHEREAS, the Board continues to support the City in development activities for the Houston Street Revitalization Project and actively review the development of Zone projects; and

WHEREAS, the Kress Building, located at 311-315 East Houston Street, is included in the City's list of historic downtown structures and is under the purview of the Historic and Design Review Commission as the existing 1939 structure is a complete remodeling of an earlier Kress store, which has occupied the site since 1905; and

WHEREAS, as the Zone has performed financially better than originally projected due to City's early redemption of project related Certificates of Obligation, the Developer for the Houston Street TIRZ, Street Retail San Antonio, LP, has proposed that the Kress Building Façade Preservation/Rehabilitation Project be expanded, and that the Final Project Plan and Final Financing Plan be amended to permit the Developer to be reimbursed eligible project costs that were not originally contemplated as financially feasible; and

WHEREAS, the City wishes to act through the Zone to support the preservation and rehabilitation of the Kress Building façade; and

WHEREAS, the term of the Zone will remain the same, expiring on September 30, 2014; and

WHEREAS, the maximum dollar contribution of each participating taxing entity will remain the same: City at \$12,078,224; Bexar County at \$4,073,617; University Health System at \$2,026,871; and Alamo Community College District at \$1,553,333; and

WHEREAS, the City desires to amend the Final Project Plan, Final Financing Plan, and the Development Agreement as approved in substantial form by the Board on March 10, 2010; and

WHEREAS, pursuant to Section 311.011(e) of the Act, following action by the Board, the amended Final Project Plan and Final Financing Plan are effective when approved by the governing body of the municipality via a duly authorized ordinance and the amendments to the Development Agreement are effective following approval by all the parties; and

WHEREAS, the meeting at which this Ordinance was passed was open to the public and public notice of the time, place and purpose of said meeting was given all as required by Chapter 551, Texas Government Code; **NOW THEREFORE**:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The Final Project Plan, attached as Exhibit A and in substantial form, is approved as amended by the Board.

SECTION 2. The Financing Plan, attached as Exhibit B and in substantial form, is approved as amended by the Board to reflect the changes in the Final Project Plan.

SECTION 3. The Fourth Amendment to the Development Agreement, attached as Exhibit C and in substantial form, is approved as amended by the Board at its meeting of March 10, 2010 and acknowledged by the Developer, Street Retail San Antonio, LP, to reflect the changes in the Final Project Plan and Final Financing Plan.

SECTION 4. The City Manager, or her designee, is authorized to execute the attached Fourth Amendment to the Development Agreement. The City Clerk shall file a true and correct copy of the Fourth Amendment to the Development Agreement with this Ordinance.

SECTION 5. The City Council finds that the amended Final Project Plan and Final Financing Plan and the Fourth Amendment to the Development Agreement for the Zone are feasible and in compliance with the City's Master Plan and the City's Guidelines and Criteria for use of tax increment financing by encouraging economic and community revitalization and infrastructure improvements within certain areas of the City which would not have occurred without tax increment financing.

SECTION 6. Fund 29086006 entitled TIRZ-Houston Street is established to record payments up to the amount of \$1,925,000 using cost center 0703280001. General Ledger 5201040 for reimbursements is authorized in accordance with the amended Development Agreement. In addition, the TIRZ Fund will pay interest costs at a rate of 5.75% on up to \$1,925,000 of eligible expenses. All disbursements to the Developer are contingent on the availability of TIRZ funds.

SECTION 7. The financial allocations in this Ordinance are subject to approval by the Chief Financial Officer, City of San Antonio. The CFO may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

SECTION 8. The statements set forth in the recitals of this Ordinance are true and correct, and are incorporated as part of this Ordinance.

SECTION 9. If any provision of this Ordinance or the application of any provision of this Ordinance to any circumstance shall be held to be invalid, the remainder of this Ordinance and

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the application of the remainder of this Ordinance to other circumstances shall nevertheless be valid, as if such invalid provision had never appeared in this Ordinance, and this Ordinance would have been enacted by this City Council without such invalid provision.

SECTION 10. This Ordinance shall become effective immediately upon passage by eight affirmative votes; otherwise, it shall be effective ten days after its passage.

PASSED AND APPROVED this 1st day of April, 2010.



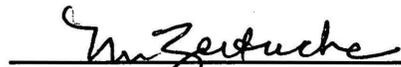
M A Y O R
Julián Castro

ATTEST:

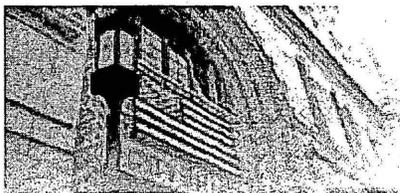


Leticia M. Vacek, City Clerk

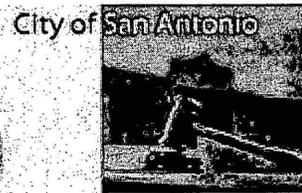
APPROVED AS TO FORM:



for Michael D. Bernard, City Attorney



Request for
**COUNCIL
ACTION**



Agenda Voting Results - 32

Name:	5, 6, 7, 8, 9, 11, 13, 14, 15, 16, 17, 21, 22, 23, 24, 25, 26, 28A, 28B, 28C, 28D, 28F, 28G, 28H, 28I, 28J, 28K, 29, 30, 32, 33, 36, 37, 38, 39						
Date:	04/01/2010						
Time:	09:32:57 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing amendments to the Final Project and Final Finance Plans and to the Development Agreement between Street Retail San Antonio, LP, the City of San Antonio, and the Board of Directors for the Tax Increment Reinvestment Zone #9, City of San Antonio, Texas ("Houston Street TIRZ"). [Pat DiGiovanni, Deputy City Manager / Interim Director, Center City Development]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Mary Alice P. Cisneros	District 1		x				
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x				x
Leticia Cantu	District 4		x				
David Medina Jr.	District 5	x					
Ray Lopez	District 6		x				
Justin Rodriguez	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
John G. Clamp	District 10		x			x	

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Exhibit A

Final Project Plan

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Exhibit B

Final Financing Plan

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Exhibit C

Fourth Amendment to the Development Agreement

**FOURTH AMENDMENT
TO
HOUSTON STREET TAX INCREMENT REINVESTMENT ZONE
DEVELOPMENT AGREEMENT**

FOR VALUE RECEIVED, the receipt and sufficiency of which is hereby acknowledged, this Fourth Amendment to the Development Agreement ("Fourth Amendment") is entered into by the **CITY OF SAN ANTONIO**, a Texas Municipal Corporation ("City"), acting by and through its City Manager pursuant to and duly authorized by Ordinance No. 2010-04-01-____, passed and approved on April 1, 2010; **STREET RETAIL SAN ANTONIO, LP**, a Delaware limited partnership ("Developer") acting by and through its sole general partner, **STREET RETAIL SAN ANTONIO, INC.**, a Maryland corporation, which in turn is acting by and through its duly authorized designated officer; and the Board of Directors for **REINVESTMENT ZONE NUMBER NINE, CITY OF SAN ANTONIO, TEXAS**, a tax increment reinvestment zone ("Board") as approved at its meeting on the 10th day of March 2010.

- A. City and Developer entered into the Development Agreement ("Agreement") pursuant to City of San Antonio Ordinance No. 91539, dated March 30, 2000.
- B. City and Developer previously amended the Agreement on September 13, 2000 and again on October 25, 2000 both per Ordinance No. 92409 and further on September 20, 2007 per Ordinance 2007-09-20-0986.
- C. City, Developer, and Board agree to amend specific provisions of the Agreement as set out in this Fourth Amendment.
 1. Article 1, Section 1.1.27 "Project Costs" of the Agreement is amended by deleting subsection (i) and substituting the following in its place:

“(i) costs of construction, alteration, demolition, remodeling, repair, architectural, engineering, preconstruction services, management, rehabilitation and re-construction with respect to the projects set out in Sections 7.1, 7.2, 7.3, 7.3A, 7.3B and 7.4 of this Agreement, costs of acquisition of the property embraced by the Majestic Courtyard Park, and....”
 2. Article 1, Section 1.1.36 "TIF Eligible Improvements" of the Agreement is amended by deleting the first clause "Improvements described in Sections 7.1, 7.2, 7.3 and 7.3A and 7.4..." and substituting the following in its place:

“Improvements described in Sections 7.1, 7.2, 7.3, 7.3A, 7.3B and 7.4...”.

3. A new section 7.3B of the Agreement is added to and made a part of Article 7 of the Agreement:

“7.3B Kress Building Façade Preservation/Rehabilitation Project: This project involves the preservation and/or rehabilitation of the façade of the Kress Building. Up to \$1,925,000.00 of funds, plus accrued interest, which Developer expends to preserve and/or rehabilitate the façade of the Kress Building, including initial architectural, engineering, preconstruction services and management costs, and which are eligible Project Costs shall be reimbursed to the Developer in accordance with the terms, conditions, and limitations of this Article 7 and Subsection 7.3B.6.

7.3B.1 Construction. Developer acknowledges and agrees that it shall not be entitled to any reimbursement of Project Costs for this project unless Developer completes the preservation and/or rehabilitation of the façade of the Kress Building as described in the Repair/Maintenance Application approved by the City’s Historic Preservation Officer. Developer acknowledges and agrees to seek approval of any exterior changes in material or design from the Historic Design Review Commission.

7.3B.2 Construction Contracts. The construction contract(s) relating this project will be subject to the prevailing wage requirements imposed in contracts or projects undertaken by the City per City Ordinance No. 2008-11-20-1045 and as amended.

7.3B.3 Preconstruction Meeting. Prior to beginning construction work for façade preservation and/or rehabilitation, the Developer shall contact the City’s Tax Increment Financing Unit to schedule a preconstruction meeting. The Developer and all contractor(s) shall attend the preconstruction meeting. At the meeting, the City will review the required form and manner of documenting and submitting information necessary to minimize delay in City approval of Developer’s reimbursement.

7.3B.4 Qualifying Lease. A qualifying lease is a lease of all or a portion of the second through fifth floor of the Kress Building with a term of five or more years and in effect on September 30, 2014. Developer will make available to the City all qualifying lease documents upon their execution, redacted as reasonably requested by Developer and approved by City.

7.3B.5 Interest. Project Costs expended by Developer for the project described in Section 7.3B of this Agreement which are reimbursable under the terms of this Agreement will bear interest from the first month following the month in which such Project Cost(s) were expended for such purpose, at a rate of 5.75% per annum and such accrued interest will be reimbursed to Developer on September 30, 2014 or the first business day thereafter. Initially interest will be paid Developer on the \$1,925,000.00 of Project Costs eligible for reimbursement.

7.3B.5.1 Calculation of Interest. The City will determine the effective date of a qualifying lease. The value of the Project Costs earning interest will be reduced by \$250,000.00 for each floor under a qualifying lease upon the effective date of the qualifying lease. In the event, only a portion of an entire floor is under a qualifying lease, then the value of the Project Costs earning interest will be reduced on the effective date of the qualifying lease by multiplying \$250,000.00 by the percentage of the leasable area of that floor which is under a qualifying lease.

7.3B.6 Calculation of Reimbursable Project Costs. With proper documentation of expenses, the Developer will be reimbursed a maximum of \$1,925,000.00, plus accrued interest, for this project subject to the following adjustment for leased space. The City will evaluate the area under a qualifying lease as of September 30, 2014. The maximum payment of \$1,925,000.00 to the Developer will be reduced by \$250,000.00 for each floor under a qualifying lease. In the event, only a portion of an entire floor is under a qualifying lease, then Developer's reimbursement for a partially leased floor will be reduced by multiplying \$250,000.00 by the percentage of the leasable area of that floor which is under a qualifying lease.

7.3B.7 Timing of Reimbursement. The reimbursement due the Developer for this project, both Project Costs and interest due, will be calculated by the City in September 2014. Only funds necessary to effect the exact reimbursement due Developer will be transferred into the Tax Increment Fund for subsequent distribution to Developer on September 30, 2014 or the first business day thereafter.

4. The first sentence in Section 7.6.2 of the Agreement is amended to modify the parenthetical to read "... (other than the projects described in Sections

7.3A and 7.3B) after the phrase “for each project covered by this Article 7 ...”.

5. The first sentence in Section 7.7 of the Agreement is amended to delete “\$6,400,000.00 (plus interest and all other payments expressly authorized under the terms of this Agreement).” and substitute “\$8,078,793.00 (excluding interest and all other payments expressly authorized under the terms of this Agreement). Actual costs are \$1,148,825.00 for Houston Street Bridge Linkage, \$1,928,198.00 for the Majestic Courtyard, \$1,550,959.00 for Façade, \$144,811.00 for Predevelopment Costs, \$1,381,000.00 for Walgreens, and \$1,925,000.00 for the Kress Building. The Project Costs as originally authorized were \$975,000.00 for the Houston Street Bridge Linkage, \$1,600,000.00 for the Majestic Courtyard, \$1,500,000.00 for Façade, \$600,000.00 for Additional Public Improvements, and \$100,000 for Predevelopment Costs.” in its place.
- D. This Amendment may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same instrument.
 - E. Except as otherwise expressly modified hereby, all terms and provisions of the Agreement are ratified and confirmed and shall remain in full force ad effect, enforceable in accordance with their terms.
 - F. This Amendment shall be effective on the date of the last signature to the document.

[Signatures to follow on next page]

**CITY
CITY OF SAN ANTONIO**

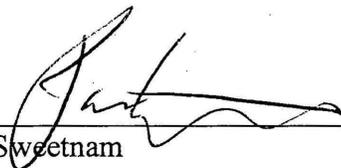
SHERYL SCULLEY

City Manager
City of San Antonio

Date: _____

**DEVELOPER
STREET RETAIL SAN ANTONIO, LP
a Delaware limited partnership**

By: **STREET RETAIL SAN ANTONIO
Inc.**, a Maryland Corporation,

By:  _____
Jan Sweetnam
Vice President
Date: 3.22.10

CITY CLERK

Leticia M. Vacek
City Clerk
Date: _____

**BOARD OF DIRECTORS,
TAX INCREMENT REINVESTMENT
ZONE NUMBER NINE,
CITY OF SAN ANTONIO, TEXAS**

Councilwoman Mary Alice P. Cisneros
Chairman
Date: _____

Approved as to form: _____
City Attorney
Date: _____