RR
09/17/15
Item No. 31

AN ORDINANCE 2015-09-17-0804

AUTHORIZING EXECUTION OF A CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM GRANT AND LOAN AGREEMENT IN A CUMULATIVE AMOUNT OF APPROXIMATELY $941,710.70 TO 400 EAST HOUSTON STREET, LP FOR PROJECT COSTS RELATED TO THE MAVERICK BUILDING PROJECT TO INCLUDE A RELEASE OF LIEN IN THE AMOUNT $381,615.65.

* * * * * * * * * * *

WHEREAS, 400 East Houston Street, LP ("Developer") is proposing a $5,000,000 investment in the Maverick Building located at 400 E. Houston, St., San Antonio, TX 78205 to rehabilitate and renovate the historic building to provide for at least eighty-five (85) rental housing units and 6,000 square feet of retail space (the "Project"); and

WHEREAS, Developer is requesting an economic development grant to defray costs associated with Project costs; and

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code and Section 311.010 of the Texas Tax Code, the City of San Antonio (the "City") and TIRZ Number Nine (the "Houston Street TIRZ") are authorized to enter into an economic development grant and loan agreement for the purpose of promoting local economic development and stimulating business and commercial activity within the city limits and reinvestment zone; and

WHEREAS, the City and the Houston Street TIRZ support programs which would allow for economic development within the Houston Street TIRZ boundaries and have identified the tax increment produced by the Project, certain economic incentive funds and certain City fee waivers as the funding sources for a Chapter 380 economic development program grant; and

WHEREAS, contingent upon the Board of Directors of the Houston Street TIRZ passing a Resolution of support for the Project and committing TIRZ Tax Increment Funding in an amount estimated to be approximately $415,753.05 over a fifteen (15) year period to the Developer to undertake and complete the Project, the City shall provide additional incentives in the form of an economic development loan in the amount of $120,000.00 and City fee waivers in the amount of $24,342.00 to Developer through a Chapter 380 Economic Development Program Grant and Loan Agreement (Exhibit "A"); and

WHEREAS, the City is also providing a waiver of the existing Community Development Block Grant (CDBG) lien on the Maverick Building property and forgiving the balance due of approximately $381,615.65; **NOW THEREFORE**:

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

SECTION 1. Contingent upon the passage of a resolution of support and commitment of funding for the Project from the Board of Directors of the Houston Street TIRZ, the City Council

approves the terms and conditions of an Economic Development Program Grant and Loan Agreement with 400 East Houston Street, LP in a cumulative amount of approximately $941,710.70 and a Release of Lien in the amount of $381,615.65 for the Project.

SECTION 2. The City Manager or her designee is authorized to execute an Economic Development Grant and Loan Agreement in accordance with the terms and conditions of this Ordinance. A copy of the Agreement, in substantially final form, is attached to this Ordinance as **Attachment I**. The final agreement shall be filed with this Ordinance upon execution. A sample, non-binding payment schedule is attached to this Ordinance as **Attachment II**.

SECTION 3. Funding for this Ordinance in the amount of $120,000.00 is contingent upon approval of the Fiscal Year 2016 Budget for Fund 29104000, Cost Center 1909010001 and General Ledger 5201040.

SECTION 4. If approved by council, payment not to exceed the budgeted amount is authorized to 400 East Houston Street, LP and should be encumbered with a purchase order.

SECTION 5. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 6. This Ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED and **APPROVED** this 17th day of September, 2015.

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek
City Clerk

APPROVED AS TO FORM:

Martha G. Sepeda
Acting City Attorney

Agenda Item:	**31 (in consent vote: 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 22A, 22B, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, 36, 37, 38, 40, 41, 42, 43)**
Date:	09/17/2015
Time:	10:02:11 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing a Chapter 380 Economic Development Program Grant and Loan Agreement in a cumulative amount of approximately $941,710.70 with 400 East Houston Street, LP for project costs related to the rehabilitation of the Maverick Building, to include a release of lien in the approximate amount of $381,615.65. [Lori Houston, Assistant City Manager and Acting Director, Center City Development & Operations]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Treviño	District 1		x				x
Alan Warrick	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x			x	
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

Attachment I

STATE OF TEXAS	§	
	§	**ECONOMIC DEVELOPMENT**
	§	**INCENTIVE AGREEMENT**
COUNTY OF BEXAR	§	

This Economic Development Incentive Agreement (hereinafter referred to as this "Agreement") is made and entered into by and among the City of San Antonio (the "CITY"), a municipal corporation of the State of Texas, acting by and through its City Manager or her designee, the Tax Increment Reinvestment Zone Number Nine (Houston Street TIRZ, or the "TIRZ"), acting by and through its Board of Directors, and 400 EAST HOUSTON STREET, LP (hereinafter referred to as "DEVELOPER") and whom together may be referred to as the "Parties".

RECITALS

WHEREAS, DEVELOPER is engaged in an economic development project that will be located within the city limits of San Antonio and within the boundaries of the TIRZ that will consist of the rehabilitation of the historic Maverick Building, the renovation and delivery of at least EIGHTY-FIVE (85) rental housing units, and the renovation and activation of 6,000 square feet of street-level retail space (the "Project") located at 400 E. Houston St., San Antonio, TX 78205 (the "Project Site"), as more specifically described in **Exhibit A**; and

WHEREAS, once completed, the Project is anticipated to result in the investment of approximately FIVE MILLION DOLLARS AND ZERO CENTS ($5,000,000.00) in real property improvements within the boundaries of the TIRZ and City Council District 1; and

WHEREAS, DEVELOPER is seeking economic incentives from the CITY and the TIRZ to undertake and complete the Project; and

WHEREAS, the CITY and the TIRZ have identified funds to be made available to DEVELOPER in the form of an economic development program grant, loans and certain fee waivers (the "Incentives") for use in undertaking and completing the Project in accordance with the terms and conditions of this Agreement; and

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code and Section 311.010(b) and Section 311.010 (h) of the Texas Tax Code, the CITY and the TIRZ are authorized to grant and loan funds to promote state or local economic development and to stimulate business and commercial activity in the municipality and within the TIRZ; and

WHEREAS, the Board of Directors of the TIRZ, by resolution dated _____ __, 2015, has authorized the TIRZ to enter into this Agreement for the limited purpose of authorizing Tax Increment Funds ("TIF"), which, pursuant to Section 311.004, Texas Tax Code, are certain funds established by the CITY for the TIRZ, to be used as one of the funding sources for the Incentives; **NOW THEREFORE**:

The Parties hereto severally and collectively agree, for the consideration herein set forth, and by the execution hereof are bound, to the mutual obligations herein contained and to the

performance and accomplishment of the tasks hereinafter described:

ARTICLE I. AGREEMENT PURPOSE

DEVELOPER shall undertake the Project which is anticipated to promote local economic development and to stimulate business and commercial activity in the City of San Antonio and in the TIRZ. The CITY and TIRZ are supporting the Project through this Agreement to provide Incentives to be used to defray costs associated with the Project.

ARTICLE II. AGREEMENT PERIOD

This Agreement shall commence upon the Effective Date listed on the signature page and shall terminate fifteen (15) years following the completion of construction of the Project, which date shall be evidenced by the issuance of a Certificate of Occupancy ; or as otherwise terminated in accordance with the terms provided herein (the "Term").

ARTICLE III. PROJECT REQUIREMENTS

A. The Project.

1. Investment. DEVELOPER shall invest approximately FIVE MILLION DOLLARS AND ZERO CENTS ($5,000,000.00) (the "Minimum Investment") in the Project at the Project Site. The Minimum Investment shall include expenditures in: design; base building construction/renovation costs; public improvement costs; taxes and insurance; administrative and financing costs; and reasonable DEVELOPER fees.

2. Construction. DEVELOPER shall commence construction and demolition, if applicable, at the Project Site on or before January 31, 2016 ("Commencement Date"), and shall use commercially reasonable efforts to complete construction no later than March 31, 2017 (the "Completion Date"), subject to Force Majeure as defined in this Agreement. The Commencement Date shall be determined by the issuance of a building permit for the Project Site and CITY's receipt of correspondence from the general contractor for the Project certifying that construction has commenced. The Completion Date shall be determined by the issuance of a Certificate of Occupancy for the Project Site by CITY, not to be unreasonably withheld.

a. DEVELOPER shall provide progress reports to City on the Project and Project Site on a quarterly basis from the Commencement Date through the Completion Date (the "Construction Period"). In addition to the quarterly progress reports, should CITY request an interim progress report during the Construction Period, DEVELOPER shall provide such progress report within fifteen (15) business days.

b. DEVELOPER shall comply with all applicable Federal, State and local laws and regulations, including federal Environmental Protection Agency (EPA), Texas Department of State Health Services (TDSHS) and Texas Commission on

Environmental Quality (TCEQ) rules and regulations and all other regulations and laws relating to the environment, Asbestos Containing Materials (ACM), Hazardous Substances or exposure to ACM and Hazardous Substances as applicable and shall develop and operate the Project in accordance with the terms and conditions of this Agreement.

c. No streets, sidewalks, drainage, public utility infrastructure, or other public improvements ("Public Improvements") with a lien still attached may be offered to the CITY for dedication. If any lien or claim of lien, whether choate or inchoate (collectively, any "Mechanic's Lien") is filed against DEVELOPER regarding the Public Improvements on the Project by reason of any work, labor, services or materials supplied or claimed to have been supplied by, or on behalf of, DEVELOPER, or any of its agents or Contractors, DEVELOPER shall cause the same to be satisfied or discharged of record, or effectively prevent the enforcement or foreclosure against the Project's Public Improvements by injunction, payment, deposit, bond, court order or otherwise.

d. DEVELOPER is responsible for complying with all applicable City Code provisions, including provisions of the Unified Development Code, enforced pursuant to the CITY's subdivision platting authority, and as amended, including, but not limited to, those provisions related to drainage, utilities, and substandard public street rights-of-ways for development and construction of the Project including the Public Improvements. In addition, DEVELOPER shall exercise commercially reasonable efforts to follow the Urban Neighborhood recommendations of the applicable Master Plan, if any, and shall consider incorporating low impact development strategies for water quality, storm water and drainage where appropriate for the Project. This Agreement in no way obligates City to approve any subsequent permits or requests for the Project as DEVELOPER is still responsible for acquiring all necessary permits and/or approvals as needed for the Project.

3. If a Project is a market rate rental project it is required to maintain 10% of its housing units at the Project's first year rental rate per square foot, adjusted for inflation in accordance with the Consumer Price Index (CPI) for the 0300 South Urban area, for the term of the Annual Real Property Tax Reimbursement Grant as described in Article IV.A. below.

ARTICLE IV. ECONOMIC DEVELOPMENT PROGRAM INCENTIVES

CITY and TIRZ are providing DEVELOPER with Incentives in a cumulative amount of approximately, but not limited to, NINE HUNDRED FORTY-ONE THOUSAND SEVEN HUNDRED AND TEN DOLLARS AND SEVENTY CENTS ($941,710.70).

No disbursement of Incentives, other than fee waivers, shall be made until the following:

(a) Execution of the Agreement by all Parties; and

(b) Receipt of evidence of the issuance of a building permit from the CITY of San Antonio for the Project's location on or prior to the Commencement Date; and

(c) Commencement of construction on the Project to be evidenced by the submission and receipt of a letter confirming commencement by the general contractor to CITY; and

(d) Receipt by the CITY of evidence in the form of a letter from a qualified financial institution or certified public accountant confirming DEVELOPER has funds available on deposit or under an existing credit facility or construction loan sufficient to complete the Project on or prior to the Commencement Date.

A. Annual Real Property Tax Reimbursement. Subject to the terms and conditions of this Agreement and the Payment Conditions (defined below), for each tax year commencing with the Initial Reimbursement Tax Year and then continuing annually for a total of FIFTEEN (15) consecutive tax years throughout the remainder of the Term of this Agreement, CITY and TIRZ shall provide DEVELOPER, following submission of a tax invoice by DEVELOPER indicating full payment of all taxes owed by DEVELOPER on the Project, an annual grant for the Term of this Agreement in the cumulative amount of approximately, but not limited to, FOUR HUNDRED FIFTEEN THOUSAND SEVEN HUNDRED FIFTY-THREE DOLLARS AND FIVE CENTS ($415,753.05).

(a) The amount of the annual grant (the "Annual Incremental Property Tax Reimbursement") shall be equal to 100% of:

(i) the actual amount of real property taxes paid to CITY with respect to the Project Site for the immediately preceding Tax Year, *less* the amount of real property taxes paid to City with respect to the Project Site for the tax year ending December 31, 2015 (the "Base Year") **Exhibit B**.

a. The "Initial Reimbursement Tax Year" shall be defined as the first tax year in which actual project completion occurs, for which reimbursement under this section can be sought.

(b) Payment of the Annual Incremental Property Tax Reimbursement to DEVELOPER shall occur in accordance with the following conditions (collectively, the "Payment Conditions"):

(i) For each tax year during the Term of this Agreement, CITY and TIRZ shall pay the Annual Incremental Property Tax Reimbursement to DEVELOPER provided the CITY has deposited funds into the TIF for that particular tax year, pursuant to Section 311.013 of the Texas Tax Code. DEVELOPER further understands that the level of participation in the TIRZ by participating governmental entities may be less than 100%.

(ii) For any particular tax year during the Term of this Agreement, if no tax increment is realized within the TIRZ, then the TIRZ shall defer payment of the Annual Incremental Property Tax Reimbursement that is due to DEVELOPER under this Article, during that tax year.

(iii) For any particular tax year during the Term of this Agreement, if insufficient tax increment is realized within the TIRZ to permit the full payment of the Annual Incremental Property Tax Reimbursement due to DEVELOPER under this Article, the TIRZ shall pay as much of the Annual Incremental Property Tax Reimbursement to DEVELOPER, as possible, and the TIRZ shall defer payment of any unpaid balance of the Annual Incremental Property Tax Reimbursement due to DEVELOPER under this Article during that tax year.

(iv) It is expressly agreed that all deferred Annual Incremental Property Tax Reimbursements (the "Deferred Amounts Due") shall accrue without interest and shall be payable at the earliest reasonable opportunity to DEVELOPER by the TIRZ upon the availability of tax increment in the Tax Increment Fund during the Term of this Agreement.

(v) DEVELOPER acknowledges that unless the TIRZ is existing or extended, payments will cease upon termination of the TIRZ and reconciliation of all accounts. Once the TIRZ terminates, CITY may be liable for obligations regarding the Annual Property Tax Increment Reimbursement. However, should City undertake payment of the Annual Incremental Property Tax Reimbursement, then such payment shall be reduced annually to sixty-two point six percent (62.6%) of the annual incremental property tax paid by DEVELOPER.

(vi) The DEVELOPER understands and agrees that any expenditure made by the DEVELOPER in anticipation of reimbursement from tax increments shall not be, nor shall be construed to be, financial obligations of the CITY or the TIRZ. The DEVELOPER shall bear all risks associated with reimbursement, including, but not limited to: incorrect estimates of tax increment, changes in tax rates or tax collections, changes in state law or interpretations thereof, changes in market or economic conditions impacting the Project, changes in interest rates or capital markets, changes in building and development code requirements, changes in CITY policy, and/or unanticipated effects covered under legal doctrine of force majeure.

(vii) Any and all amounts payable by the TIRZ under this Agreement are payable solely from the TIRZ Tax Increment Fund, and no claim for payment of any amount outside of this contribution shall be made, claimed or permitted against any other funds, properties, assets or the general credit of the TIRZ and/or the CITY.

(viii) Any fees associated with the administration of the TIRZ shall take priority of payment over DEVELOPER's reimbursement.

(c) Obligation to Pay Taxes. It is understood that DEVELOPER shall continue to pay all taxes owed on the Property Site as required by law. Taxes owed shall be determined by the Bexar County Appraisal District. Prior to the CITY disbursing TIRZ funds under this Agreement, DEVELOPER must provide to CITY evidence indicating that all taxes owed by DEVELOPER on the Property Site have been paid in full for the tax year for which payment of the Annual Incremental Property Tax Reimbursement is sought, subject to DEVELOPER's right to protest taxes as permitted by law. If, during the Term of this Agreement, DEVELOPER allows its ad valorem taxes due on the Property Site to become delinquent and fails to timely and properly follow the legal procedures for the protest and/or contest of the taxing value, then the CITY and TIRZ's remedies under this Agreement shall apply.

B. Economic Development Program Loan. CITY is providing DEVELOPER with an Economic Development Incentive Loan in a cumulative amount not to exceed the lesser of (1) ONE HUNDRED TWENTY THOUSAND DOLLARS AND ZERO CENTS ($120,000.00) or (2) TWENTY DOLLARS AND ZERO CENTS ($20.00) per square foot of commercial retail space developed at the Project Site (the "Incentive Loan"). The purpose of the Incentive Loan is to provide a financial incentive to undertake and complete the retail space for the Project. DEVELOPER understands that any disbursement of the Incentive Loan is contingent upon CITY'S availability of funds at the time of disbursement.

1. Disbursement. The Incentive Loan shall be disbursed to DEVELOPER: a) no sooner than sixty (60) days following substantial completion of the Project; b) upon written request from DEVELOPER to disburse the funds; and c) upon verification of receipt of documents described in Article IV (a) – (d).

2. Repayment of Loan. The Incentive Loan shall be due and payable to CITY on or before the fifth (5th) anniversary of the date upon which the Incentive Loan is disbursed (the "Incentive Loan Maturity Date"). The Incentive Loan shall be interest-free.

3. Loan Forgiveness. The Incentive Loan shall be forgivable so long as such funds are used for commercial retail tenant finish-out improvements at the Project Site. TWENTY-PERCENT (20%) of the Incentive Loan shall be forgiven annually over a 5-year period provided that documentation is provided to the City verifying (1) total retail space developed at the Project Site; (2) that the space has been leased to a retail operator for at least EIGHTY-PERCENT (80%) of the 5-year term; and (3) that the funding has been used for finish-out improvements to the retail space. Any amount not qualified for forgiveness under this section shall be due and payable to CITY on or before the Incentive Loan Maturity Date.

4. Acceleration of Loan Repayment. Should DEVELOPER, in the sole discretion of City, breach a material term of this Agreement and CITY terminates the Agreement in accordance with Article VIII, then, as of the date of termination of the Agreement, the

entire remaining principal balance and Accrued Interest of all Incentive Loan Funds shall be due and payable to CITY no later than sixty (60) days following CITY's Notice of Termination to DEVELOPER.

C. Fee Waiver. CITY is providing DEVELOPER with City Development Fee Waivers in the cumulative amount of approximately TWENTY-FOUR THOUSAND THREE HUNDRED FORTY-TWO DOLLARS AND ZERO CENTS ($24,342.00) as per the Inner City Reinvestment and Infill Policy. The Fee Waiver is administrative in nature and is effective for use as of the date they are issued.

D. CITY's U.S. Housing and Urban Development (HUD) Community Development Block Grant (CDBG) Program Loan Forgiveness: In consideration for DEVELOPER providing local economic development to stimulate business and commercial activity in the municipality and for meeting the National Objective of the CDBG Program, CITY agrees to forgive the remaining balance, in the amount of THREE HUNDRED EIGHTY-ONE THOUSAND SIX HUNDRED FIFTEEN DOLLARS and SIXTY-FIVE CENTS ($381,615.65), of that certain Real Estate Lien Note made to CITY by HOUSTON STREET REDEVELOPMENT, INC. as Maker and CITY as Payee, dated September 29, 1995, ("CDBG Note") together with all subsequent Renewals, Extensions and Modifications of the Real Estate Lien Note and Liens, and secured by that certain Deed of Trust ("CDBG Lien") dated October 3, 1995, duly recorded in Volume 6553, Page 1223 of the Real Property Records of Bexar County, Texas against the Project Site. Upon execution of this Agreement, CITY shall execute a Release of Lien, attached hereto and incorporated herein for all purposes as **Exhibit C** "Release of Lien", releasing the CDBG Lien securing said CDBG Note.

ARTICLE V. CITY AND TIRZ OBLIGATIONS

A. In consideration of full and satisfactory performance of activities required by this Agreement, CITY and TIRZ will pay DEVELOPER in accordance with Article IV above.

B. Neither CITY nor TIRZ will be liable to DEVELOPER or any other entity for any costs incurred by DEVELOPER in connection with this Agreement.

C. The CITY agrees to act as the fiscal agent on behalf of the TIRZ by making disbursements from the TIF for the Project pursuant to this Agreement. Additionally, the CITY shall monitor DEVELOPER's compliance with the terms and conditions of this Agreement and provide updated information to the TIRZ regarding the progress of the Project.

ARTICLE VI. RETENTION AND ACCESSIBILITY OF RECORDS

A. DEVELOPER shall maintain the fiscal records and supporting documentation for expenditures of Incentives associated with this Agreement. DEVELOPER shall retain such records and any supporting documentation for the greater of: (1) five [5] years from the end of the Agreement period; or (2) the period required by other applicable laws and regulations.

B. DEVELOPER shall, following reasonable advance written notice from the CITY, give the CITY, its designee, or any of their duly authorized representatives, access to and the right to examine all material records related to the cost of Project (the "Records") and the expenditure of the Incentives. CITY's access to the Records will be limited to information needed to verify that DEVELOPER is and has been complying with the terms of this Agreement. Any information that is not required by law to be made public shall be kept confidential by the CITY. DEVELOPER shall not be required to disclose to the CITY or TIRZ any information that by law DEVELOPER is required to keep confidential. Should any good faith dispute or question arise as to the validity of the data provided, the CITY reserves the right to require DEVELOPER to obtain an independent firm to verify the information. This certified statement by an independent firm shall be provided at the sole cost of DEVELOPER. The rights to access the Records shall continue as long as the Records are retained by DEVELOPER. Failure to provide reasonable access to the Records to authorized CITY representatives shall be cause for CITY and/or TIRZ to provide notice of intent to suspend or terminate this Agreement as provided for herein, or any portion thereof, for reason of default. Notwithstanding Section A above, all Records shall be retained by DEVELOPER for a period of five (5) years after all performance requirements are achieved for audit purposes until such audits or other administrative, civil or criminal matters including, but not limited to, investigations, lawsuits, administrative inquiries and open record requests are completed.

ARTICLE VII. MONITORING

The CITY reserves the right to confirm DEVELOPER's compliance with the terms and conditions of this Agreement. The CITY will provide DEVELOPER with a written report of the monitor's findings. If the monitoring report notes deficiencies in DEVELOPER's performances under the terms of this Agreement, the monitoring report shall include a listing of requirements for the correction of such deficiencies by DEVELOPER and a reasonable amount of time in which to attain compliance. Failure by DEVELOPER to take action specified in the monitoring report within a reasonable amount of time may be cause for suspension or termination of this Agreement, in accordance with Articles VIII and IX herein.

ARTICLE VIII. DEFAULT/CURE PERIOD/SUSPENSION

A. Notwithstanding the provisions of Chapter 2251 of the Texas Government Code, in the event DEVELOPER fails to comply with the terms of this Agreement such non-compliance shall be deemed a default. CITY shall provide DEVELOPER with written notification as to the nature of the default (the "Notice of Default") and grant DEVELOPER a sixty (60) day period from the date of CITY's written notification to cure such default (the "Cure Period"). Should DEVELOPER fail to cure the default within the Cure Period, CITY may, upon written notification (the "Notice of Suspension"), suspend this Agreement in whole or in part and withhold further payments to DEVELOPER. Such Notice of Suspension shall include: (1) the reasons for such suspension; (2) the effective date of such suspension; and, (3) in the case of partial suspension, the portion of the Agreement to be suspended.

B. In the case of default for causes beyond DEVELOPER's reasonable control, which cannot with due diligence be cured within the Cure Period, CITY may, in its sole discretion, extend the Cure Period provided that DEVELOPER shall: (1) immediately upon receipt of Notice of Default advise CITY of DEVELOPER's intention to institute all steps necessary to cure such default and the associated time frame; and (2) institute and thereafter prosecute to completion with reasonable dispatch all steps necessary to cure same.

C. A suspension under this Article VIII may be lifted only at the sole discretion of the CITY upon a showing of compliance with or written waiver by CITY of the term(s) in question.

D. CITY shall not be liable to DEVELOPER or to DEVELOPER's creditors for costs incurred during any term of suspension of this Agreement.

ARTICLE IX. TERMINATION

A. Should DEVELOPER fail to timely meet the Commencement Date for the Project in accordance with Article III.A.2 above, at CITY's sole discretion, and with 30 days notice to DEVELOPER, CITY may terminate the Agreement, in which instance any and all Incentives offered to DEVELOPER by CITY and TIRZ shall extinguish.

B. CITY and/or TIRZ shall have the right to terminate this Agreement for cause should DEVELOPER fail to perform under the terms and conditions herein, and should DEVELOPER fail to cure a default after receiving written notice of such default with sixty (60) days opportunity to cure. CITY and TIRZ may, upon issuance to DEVELOPER of written notice of termination (the "Notice of Termination"), terminate this Agreement for cause and withhold further payments to DEVELOPER. A Notice of Termination shall include: (1) the reasons for such termination; and (2) the effective date of such Termination.

C. Should CITY and/or TIRZ terminate this Agreement for cause, then CITY shall have the right to recapture any and all disbursed funds made under, as applicable, the Economic Development Program Annual Incremental Property Tax Reimbursement, and/or any and all disbursed Incentive Loan Funds. CITY shall be entitled to the repayment of the recaptured funds within sixty (60) calendar days from the date of the Notice of Termination.

D. In addition to the above, this Agreement may be terminated by written agreement of the Parties as follows:

1. By the CITY (with the consent of DEVELOPER) in which case the two parties shall agree upon the termination conditions, including the repayment of funds and the effective date of termination; or

2. By the DEVELOPER upon written notification to CITY, setting forth the reasons of such termination, a proposed pay-back plan of all funds disbursed, and the proposed effective date of such termination.

Notwithstanding the foregoing, DEVELOPER shall not be relieved of its obligation to repay any and all disbursed funds made under this Agreement, nor shall DEVELOPER be relieved of any liability to CITY for actual damages due to CITY by virtue of any breach by DEVELOPER of any terms of this Agreement.

E. Other Remedies Available. The City shall have the right to seek any remedy at law to which it may be entitled, in addition to termination and repayment of funds, if DEVELOPER defaults under the material terms of this Agreement and fails to cure such default within the cure period set forth above.

ARTICLE X. NOTICE

Any notice required or permitted to be given hereunder by one Party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if: (a) delivered in person to the address set forth herein below for the Party to whom the notice is given; (b) placed in the United States mail with postage prepaid, return receipt requested, properly addressed to such Party at the address hereinafter specified; or (c) deposited, with fees prepaid, into the custody of a nationally recognized overnight delivery service such as FedEx, addressed to such Party at the address hereinafter specified. Any notice mailed in the above manner shall be effective two (2) business days following its deposit into the custody of the United States Postal Service or one (1) business day following its deposit into the custody of such nationally recognized delivery service, as applicable; all other notices shall be effective upon receipt. From time to time, either Party may designate another address for all purposes under this Agreement by giving the other Party no less than ten (10) calendar days advance written notice of such change of address in accordance with the provisions hereof.

If intended for CITY, to:	City of San Antonio Attn: Director Center City Development & Operations P.O. Box 839966 San Antonio, TX 78283-3966
If intended for TIRZ, to:	Planning & Community Development Dept. Cliff Morton Development & Business Service Center Attn: Tax Increment Finance Unit 1901 S. Alamo San Antonio, TX 78204
If intended for DEVELOPER, to:	400 East Houston Street, LP Attn: David Adelman 2013 Broadway San Antonio, TX 78215

ARTICLE XI. SPECIAL CONDITIONS AND TERMS

A. Termination of TIRZ. The Parties agree that, in the event that the CITY, acting in accordance with State law, terminates the TIRZ or adopts an ordinance that causes the termination date of the TIRZ to occur on a date earlier than provided in the ordinance that initially established the TIRZ or by subsequent CITY ordinance, the DEVELOPER may petition the CITY to amend this Agreement, in its sole discretion, to provide for the payment of the Annual Property Tax Increment Reimbursement in accordance with the material terms and conditions of this Agreement. However, should the Project become located in another TIRZ, DEVELOPER may alternatively petition for assignment to said TIRZ in accordance with Article XXI.B.

B. Employment. DEVELOPER, in accordance with Chapter 2264 of the Texas Government Code, agrees not to knowingly employ any undocumented workers at the Project during the Term of this Agreement. If DEVELOPER is convicted of a violation under 8 U.S.C. Section 1324a (f), then DEVELOPER shall repay the CITY or TIRZ the Incentives paid under this Agreement for the tax year(s) covered under this Agreement during which such violation occurred. Such payment shall be made within 120 business days after the date DEVELOPER is notified by the CITY of such violation. The CITY, in its sole discretion, may extend the period for repayment herein. Additionally, DEVELOPER shall pay interest on the amounts due to CITY or TIRZ at the rate periodically announced by the Wall Street Journal as the prime or base commercial lending rate, or if the Wall Street Journal shall ever cease to exist or cease to announce a prime or base lending rate, then at the annual rate of interest from time to time announced by Citibank, N.A. (or by any other New York money center bank selected by the CITY) as its prime or base commercial lending rate, from the date of such violation notice until paid.

ARTICLE XII. CONFLICT OF INTEREST

A. DEVELOPER shall ensure that no employee, officer, or individual agent of CITY shall participate in the selection, award or administration of a subcontract supported by funds provided hereunder if a conflict of interest, real or apparent, would be involved. Such conflict of interest would arise when: (1) the employee, officer, or individual agent; (2) any member of his or her immediate family; (3) his or her partner; or, (4) any organization which employs, or is about to employ any of the above, has a financial or other interest in the firm or person selected to perform the subcontract and the relationship calls for payments to be made to such subcontractor on terms which are greater than those which are customary in the industry for similar services conducted on similar terms. DEVELOPER shall comply with Chapter 171, Texas Local Government Code as well as the CITY's Code of Ethics.

B. City may terminate this Agreement immediately if the DEVELOPER has offered, conferred, or agreed to confer any benefit on a City of San Antonio employee or official that the City of San Antonio employee or official is prohibited by law from accepting. Benefit means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not

include a contribution or expenditure made and reported in accordance with law. Notwithstanding any other legal remedies, the City may obtain reimbursement for any expenditure made to the DEVELOPER resulting from the improper offer, agreement to confer, or conferring of a benefit to a City of San Antonio employee or official.

ARTICLE XIII. NONDISCRIMINATION AND SECTARIAN ACTIVITY

A. As a condition of entering into this Agreement, DEVELOPER represents and warrants that it will comply with the CITY's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance 2010-06-17-0531. As part of such compliance, DEVELOPER shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of subcontractors, vendors, suppliers, or commercial customers funded in whole or in part with funds made available under this Agreement, nor shall DEVELOPER retaliate against any person for reporting instances of such discrimination. DEVELOPER shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the CITY's relevant marketplace. DEVELOPER understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of DEVELOPER from participating in City contracts, or other sanctions as provided by applicable law. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

B. None of the performances rendered by DEVELOPER under this Agreement shall involve, and no portion of the Incentives received by DEVELOPER under this Agreement shall be used in support of, any sectarian or religious activity, nor shall any facility used in the performance of this Agreement be used for sectarian instruction or as a place of religious worship.

C. DEVELOPER shall, to the best of its knowledge and belief, include the substance of this Article in all agreements entered into by DEVELOPER associated with the funds made available through this Agreement.

ARTICLE XIV. LEGAL AUTHORITY

A. Each Party assures and guarantees to the other that they possesses the legal authority to enter into this Agreement, to receive/deliver the Incentives authorized by this Agreement, and to perform their obligations hereunder.

B. The person or persons signing and executing this Agreement on behalf of each Party or representing themselves as signing and executing this Agreement on behalf of a Party, do hereby guarantee that he, she or they have been duly authorized to execute this Agreement on behalf of that Party and to validly and legally bind that Party to all terms, performances and provisions herein set forth.

C. CITY will have the right to suspend or terminate this Agreement in accordance with Articles VIII or IX if there is a dispute as to the legal authority of either DEVELOPER or the person signing this Agreement, to enter into this Agreement, any amendments hereto or failure to render performances hereunder. DEVELOPER is liable to CITY for all Incentives it has received from CITY under this Agreement if CITY suspends or terminates this Agreement for reasons enumerated in this Article.

ARTICLE XV. LITIGATION AND CLAIMS

A. DEVELOPER shall give CITY immediate notice in writing of any action, including any proceeding before an administrative agency, filed against DEVELOPER arising out the performance of any activities hereunder. Except as otherwise directed by CITY, DEVELOPER shall furnish immediately to CITY copies of all pertinent papers received by DEVELOPER with respect to such action or claim. DEVELOPER shall notify the CITY immediately of any legal action, known to DEVELOPER, filed against the DEVELOPER or any subcontractor thereto, or of any known proceeding filed under the federal bankruptcy code to which DEVELOPER or any subcontractor is a party. DEVELOPER shall submit a copy of such notice to CITY within 30 calendar days after receipt. No Incentives provided under this Agreement may be used in the payment of any costs incurred from violations or settlements of, or failure to comply with, federal and state regulations. The above notwithstanding, DEVELOPER is not required to notify CITY of claims or litigation which arise out of DEVELOPER's operations on the Project, including, without limitation, landlord tenant disputes, personal injury actions (e.g., slip and falls), and other operational activities or relationships.

B. DEVELOPER acknowledges that CITY is a political subdivision of the State of Texas and is subject to, and complies with, the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001 *et seq.*, and the remedies authorized therein regarding claims and causes of action that may be asserted by third parties for accident, injury or death.

C. This Agreement shall be interpreted according to the Constitution and the laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this Agreement shall be in Bexar County, Texas.

ARTICLE XVI. ATTORNEY'S FEES

A. In the event DEVELOPER should default under any of the provisions of this Agreement and the CITY should employ attorneys or incur other expenses for the collection of the payments due under this Agreement or the enforcement of performance or observance of any obligation or agreement on the part of DEVELOPER herein contained, DEVELOPER agrees to pay to the reasonable fees of such attorneys and such other expenses so incurred by the CITY.

B. In the event CITY or TIRZ should default under any of the provisions of this Agreement and the DEVELOPER should employ attorneys or incur other expenses for the collection of the payments due under this Agreement or the enforcement of performance or observance of any obligation or agreement on the part of CITY or TIRZ herein contained, CITY and TIRZ agrees

to pay to the DEVELOPER reasonable fees of such attorneys and such other expenses so incurred by the DEVELOPER.

ARTICLE XVII. CHANGES AND AMENDMENTS

A. Except as provided below, any alterations, additions, or deletions to the terms of this Agreement shall be by amendment hereto in writing and executed by all Parties to this Agreement. Any amendments to this Agreement which change or increase any of the Incentives to be provided DEVELOPER by CITY and/or TIRZ must be approved by CITY ordinance, with TIRZ Board approval, and in accordance with an official amendment of the TIRZ Project Plan and Financing Plan by the governing body of the TIRZ and CITY.

B. It is understood and agreed by the Parties hereto that performance under this Agreement shall be rendered in accordance with the laws and rules governing the Economic Development Program as set forth in Texas Local Government Code Chapter 380, and the terms and conditions of this Agreement.

C. Any alterations, additions, or deletions to the terms of this Agreement required by changes in state law or regulations are automatically incorporated into this Agreement without written amendment hereto, and shall become effective on the date designated by such law or regulation.

ARTICLE XVIII. SUBCONTRACTING

A. DEVELOPER shall use reasonable business efforts to ensure that the performance rendered under subcontracts entered into by DEVELOPER complies with all terms and provisions of this Agreement as if such performance were rendered by DEVELOPER.

B. DEVELOPER, in subcontracting any of the performances hereunder, expressly understands that in entering into such subcontracts, neither CITY nor TIRZ is liable to DEVELOPER's subcontractor(s).

C. DEVELOPER assures and shall obtain assurances from all of its contractors where applicable, that no person shall, on the grounds of race, creed, color, disability, national origin, sex or religion, be excluded from, be denied the benefit of, or be subjected to discrimination under any program or activity funded in whole or in part under this Agreement.

ARTICLE XIX. DEBARMENT

By signing this Agreement, DEVELOPER certifies that it will not award any Incentives provided under this Agreement to any party which it knows to be debarred, suspended or otherwise excluded from or ineligible for participation in assistance programs by the CITY.

ARTICLE XX. RIGHTS UPON DEFAULT

It is expressly understood and agreed by the Parties hereto that, except as otherwise expressly provided herein, any right or remedy provided for in this Agreement shall not preclude the exercise of any other right or remedy under any other agreements between DEVELOPER and the CITY or TIRZ or under any provision of law, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies. Failure to exercise any right or remedy hereunder shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

ARTICLE XXI. ASSIGNMENT

A. This Agreement is not assignable by any Party without the written consent of the non-assigning Parties. Notwithstanding the foregoing, DEVELOPER may assign this Agreement to a parent, subsidiary, affiliate entity or newly created entity resulting from a merger, acquisition or other corporate restructure or reorganization of DEVELOPER. In such cases, DEVELOPER shall give CITY no less than thirty (30) days prior written notice of the assignment or other transfer. Any and all future assignees must be bound by all terms and/or provisions and representations of this Agreement as a condition of assignment. Any attempt to assign the Agreement without the notification and subsequent consent of CITY and TIRZ, if consent is required under this Article, shall release CITY and TIRZ from performing any of the terms, covenants and conditions herein. Any assignment of this Agreement in violation of this Article shall enable CITY to terminate this Agreement and exercise its rights under Article IX of this Agreement.

B. The CITY and DEVELOPER also authorize the TIRZ to assign to any other Tax Increment Reinvestment Zone ("Zone") should this Project be included in the boundaries of said Zone and the Board of said Zone agrees to the assignment of all the duties, rights and obligations of the TIRZ as evidenced by a Board resolution. City staff and/or TIRZ shall be responsible for providing DEVELOPER written notice no less than 30 days prior to the proposed assignment.

C. Any restrictions in this Agreement on the transfer or assignment of the DEVELOPER's interest in this Agreement shall not apply to and shall not prevent the assignment of this Agreement to a lending institution or other provider of capital in order to obtain financing for the Project. In no event, shall the CITY or TIRZ be obligated in any way to said financial institution or other provider of capital. The City, acting as fiscal agent for the TIRZ, shall only issue checks or any other forms of payment made payable to the DEVELOPER.

ARTICLE XXII. ORAL AND WRITTEN AGREEMENTS

All oral and written agreements among the Parties to this Agreement relating to the subject matter of this Agreement that were made prior to the execution of this Agreement have been reduced to writing and are contained in this Agreement.

ARTICLE XXIII. AUTHORIZED RELIEF FROM PERFORMANCE
(Force Majeure)

The CITY may grant temporary relief from any deadline for performance of any term of this Agreement if the DEVELOPER is prevented from compliance and performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributed to the fault or negligence of the DEVELOPER. The burden of proof for the need for such relief shall rest upon the DEVELOPER. To obtain relief based upon *force majeure*, the DEVELOPER must file a written request with the CITY. CITY will not unreasonably withhold its consent.

ARTICLE XXIV. INCORPORATION OF EXHIBITS

Each of the Exhibits listed below is incorporated herein by reference for all purposes as an essential part of the Agreement, which governs the rights and duties of the Parties.

Exhibit A	Legal Description of Property
Exhibit B	Evidence of Base Year Ad Valorem Property Taxes
Exhibit C	Release of Lien

Signatures appear on next page.

WITNESS OUR HANDS, EFFECTIVE as of _____, 2015 (the "Effective Date"):

Accepted and executed in three duplicate originals on behalf of the City of San Antonio pursuant to City Ordinance #2015-09-17-_____, dated September 17, 2015, and by DEVELOPER pursuant to the authority of its _____.

CITY OF SAN ANTONIO,
a Texas Municipal Corporation

_____
Lori Houston
Assistant City Manager

DEVELOPER:
400 EAST HOUSTON STREET LP

By:_____
NAME:
TITLE:

APPROVED AS TO FORM:

_____
CITY ATTORNEY

HOUSTON STREET TAX INCREMENT REINVESTMENT ZONE #9:

_____
Name:
BOARD CHAIRPERSON

Attachment II

ATTACHMENT II

SAMPLE, NON-BINDING PAYOUT SCHEDULE

ACTUAL PAYOUT TIMING AND AMOUNTS MAY VARY

Rebate Year	Fiscal Year	Tax Increment
1	2018	$ 27,716.87
2	2019	27,716.87
3	2020	27,716.87
4	2021	27,716.87
5	2022	27,716.87
6	2023	27,716.87
7	2024	27,716.87
8	2025	27,716.87
9	2026	27,716.87
10	2027	27,716.87
11	2028	27,716.87
12	2029	27,716.87
13	2030	27,716.87
14	2031	27,716.87
15	2032	27,716.87
		$ 415,753.05

FOR ILLUSTRATIVE PURPOSES ONLY