RR
02/12/15
Item No. 25

AN ORDINANCE 2015-02-12-0098

AUTHORIZING A CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM LOAN AGREEMENT BETWEEN THE CITY OF SAN ANTONIO ("CITY"), TAX INCREMENT REINVESTMENT ZONE NO. 11 (the "TIRZ NO 11") AND THE NRP GROUP ("NRP") IN THE AMOUNT OF $500,000.00 TO UNDERTAKE AND COMPLETE THE CROCKETT STREET LOFTS PROJECT.

* * * * * *

WHEREAS, NRP Group ("Developer") is undertaking a $42.8 million economic development project comprised of a 268 unit multi-family housing development to include a 375 space structured parking complex which will be located at 243 Center St. in City Council District 2 (the "Project"); and

WHEREAS, the Project is located within Tax Increment Reinvestment Zone No. 11, the Inner City Reinvestment Infill Policy ("ICRIP") boundaries and the Center City Housing Incentive Policy ("CCHIP") boundaries; and

WHEREAS, in accordance with the ICRIP and CCHIP guidelines, the Project qualifies for up to $1,691,501.72 in economic incentives from the City; and

WHEREAS, the Developer has submitted a CCHIP application to the City and has been approved for $1,191,501.72; and

WHEREAS, the Developer is also seeking a Chapter 380 Economic Development Program Loan in the amount of $500,000.00 to defer construction costs associated with undertaking and completing the Project; and

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code, the City is authorized to create a program to loan funds to promote state or local economic development and to stimulate business and commercial activity in the municipality; and

WHEREAS, in accordance with City Ordinance No. 100684, the City created an Economic Development Program (the "Program") for the purpose of making loans available for economic development projects that the City finds will accomplish the purpose and goals of Chapter 380; and

WHEREAS, the City finds that the goals of Chapter 380 will be met by assisting NRP in undertaking and completing the Project and has identified economic development funds for use in carrying out this purpose; **NOW THEREFORE**:

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

SECTION 1. The terms and conditions of an Economic Development Program Loan Agreement (the "Agreement") between the City, TIRZ No. 11, and NRP are hereby approved. The City Manager, or her designee, is authorized to execute said Agreement in accordance with this Ordinance. A copy of the Agreement in substantially final form is set out in **Attachment I** and made a part of this Ordinance. A final copy of the Agreement shall be attached when executed.

SECTION 2. Funding in the amount of $500,000.00 for this Ordinance is available for Fund 29086007, Cost Center 0703290001 and General Ledger 5201040, as part of the Fiscal Year 2015 Budget.

SECTION 3. Payment not to exceed the budgeted amount is authorized to NRP Group and should be encumbered with a purchase order.

SECTION 4. 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 Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

SECTION 5. This Ordinance shall become effective immediately upon its passage by eight (8) votes or more and upon ten (10) days following its passage if approved by fewer than eight (8) votes.

PASSED AND APPROVED this 12th day of FEBRUARY 2015.

Ivy R. Taylor

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek

Leticia M. Vacek
City Clerk

APPROVED AS TO FORM:

Martha G. Sepeda
Acting City Attorney

Attachment I

STATE OF TEXAS	§	**CHAPTER 380 ECONOMIC**
	§	**DEVELOPMENT PROGRAM**
	§	**LOAN AGREEMENT OF THE**
COUNTY OF BEXAR	§	**CITY OF SAN ANTONIO**

This Chapter 380 Economic Development Program Loan 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, Tax Increment Reinvestment Zone #11 (the "TIRZ"), acting by and through its Board of Directors, the San Antonio Housing Trust Public Facility Corporation (the "SAHT PFC") and The NRP Group, LLC (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 called Crockett Street Lofts that will be located within the city limits of the City of San Antonio, the boundaries of the TIRZ and that will consist of the construction of two hundred and sixty-eight (268) housing units to be located at 243 Center Street, San Antonio, TX 78202, (the "Project Site") as more specifically described in **Exhibit A**, (the "Project"); and

WHEREAS, once completed, the Project is anticipated to result in the investment of approximately FORTY TWO MILLION EIGHT HUNDRED EIGHTY-FOUR THOUSAND THREE HUNDRED NINETY-THREE DOLLARS AND 0 CENTS ($42,884,393.00) in real property improvements within the boundaries of the TIRZ; 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 loan 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 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 City Council has authorized the City Manager or her designee to enter into this Agreement in accordance with City Ordinance No. 2015-01-29-____ , **Exhibit C,** passed and approved on January 29, 2015, to loan certain funds as described herein; and

WHEREAS, the Board of Directors of the TIRZ, by resolution dated November 14, 2014, 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 a funding source for this Agreement; **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 a loan of TIF funds to be used to be used for Project Costs, as defined by the TIF Act, Texas Tax Code Ch. 311. This Project will be added to the Project and Finance Plans for the Inner City TIRZ.

ARTICLE II. AGREEMENT PERIOD

This Agreement shall commence upon the Effective Date listed on the signature page and shall terminate upon the earlier of: (A) the full-repayment of the loan funds by Developer to the City; (B) six (6) years following the Commencement Date as determined in Article III; or (C) termination of this Agreement as otherwise provided herein (the "Term"). Notwithstanding the Effective Date, payment of any and all funds set out in this Agreement is contingent upon the inclusion of the Project through an official amendment of the TIRZ Project Plan and Financing Plan by the governing body of the TIRZ and CITY.

ARTICLE III. PROJECT REQUIREMENTS

A. Investment. DEVELOPER shall invest approximately FORTY TWO MILLION EIGHT HUNDRED EIGHTY-FOUR THOUSAND THREE HUNDRED NINETY-THREE DOLLARS AND 0 CENTS ($42,884,393.00) (the "Minimum Investment") in an economic development project that will be located at the Project Site and that will consist of the construction of two hundred and sixty-eight (268) housing units, including the allocation of fifty-percent (50%) of those units to be designated as "affordable" and the remaining fifty-percent (50%) to be designated "market-rate." The Minimum Investment shall be made in real property improvements. The Minimum Investment shall include expenditures in: land acquisition; design; base building construction costs; public improvement costs; taxes and insurance; administrative and financing costs; and City approved DEVELOPER fees.

B. Construction. DEVELOPER shall commence construction and demolition, if applicable, at the Project Site on or before December 31, 2015 (the "Commencement Date"), and shall use commercially reasonable efforts to complete construction (the "Completion Date"), no later than two years after the Commencement 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.

1. DEVELOPER shall provide progress reports to CITY on the Project and Project Site on a quarterly basis through the term of this Agreement. In addition to the quarterly progress reports, should CITY request an interim progress report during the term of this Agreement, DEVELOPER shall provide such progress report within fifteen (15) business days.

2. 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.

3. 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.

4. 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 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.

5. If a Project is a market rate rental project it is required to maintain 10% of its housing units at a rate not to exceed the Project's first year rental rate per square foot, adjusted for inflation in accordance with the Consumer Price Index (CPI) for the San Antonio-New Braunfels MSA, for the term of the Grant.

ARTICLE IV. ECONOMIC DEVELOPMENT PROGRAM LOAN

A. **Economic Development Program Loan.** In consideration of full and satisfactory performance of the obligations required by Article III of this Agreement, CITY shall make an Economic Development Program Loan available to DEVELOPER in the cumulative amount of FIVE HUNDRED THOUSAND DOLLARS AND 0 CENTS ($500,000.00) (the "Loan Funds"). The funds made available to DEVELOPER through this Agreement are made solely from lawfully available funds that have been appropriated by CITY. Under no circumstances shall 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, CITY shall have no obligation or liability to pay any funds to DEVELOPER unless CITY appropriates funds to make such payment during the budget year in which such funds are payable. Further, CITY shall not be obligated to pay DEVELOPER, any commercial bank, lender or similar institution for any loan or credit agreement made by DEVELOPER. DEVELOPER shall use the Loan Funds exclusively for the purpose of undertaking and completing the Project.

1. Disbursement. It is agreed and acknowledged that CITY shall have no duty to disburse more than the amount of the Loan Funds. The Loan Funds shall be disbursed to the DEVELOPER and is contingent upon the following:

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

(2) 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

(3) 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 on or prior to the Commencement Date; and

(4) Receipt by the CITY of evidence in the form of a letter from a qualified financial institution 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.

(5) DEVELOPER acquires ownership of the property located at 243 Center Street to be utilized for the Project ("Project Property").

2. Once all the preconditions above have been met by the DEVELOPER, the Loan Funds shall be eligible for disbursement as needed for the Project pending submission of invoices ("Requests for Payment") to the CITY with supporting documents for Project costs for which payment is sought in a form acceptable to the City. After TIRZ Board approval and assuming no discrepancies or additional information is required, City will issue Payments to the DEVELOPER based off the submitted Requests for Payment. DEVELOPER shall certify that, with respect to all items covered by the Request for Payment, it has complied with the provisions of the Agreement. A Request for Payment shall consist of a summary page to include related project name, materials, tasks or services for which payment is sought, Request number, and time period covered by Request for Payment. Should there be discrepancies in the Request for Payment or if more information is required, DEVELOPER will have 30 days upon notice by CITY to correct any discrepancies or submit additional information requested by CITY.

3. Use. The Loan Funds shall be used exclusively for real property improvements for the Project, in accordance with the TIF Act.

B. Repayment of Loan. Should CITY disburse the Loan Funds and DEVELOPER accepts the Loan Funds, then DEVELOPER shall be obligated to repay CITY the Loan Funds as indicated in the attached **Exhibit B**, Loan Schedule which is to be governed by the following conditions.

1. Payment of Principal and Accrued Interest. In addition to the principal amount of the Loan Funds, DEVELOPER shall also accrue and pay interest on the outstanding amount with accrual of interest beginning December 31, 2017 **for a term of three years** ("Accrued Interest"). Accrued Interest on the outstanding loan amount shall be at a fixed-rate of **2%**. The amount of the Accrued Interest payment shall be referred to as an "Interest Payment." All Payments due under this Agreement shall be made payable to REINVESTMENT ZONE NUMBER ELEVEN, CITY OF SAN ANTONIO, TEXAS TAX INCREMENT FUND and sent to:

   Planning & Community Development Dept.

   Attn: Tax Increment Finance Unit

   1400 S. Flores St.

   San Antonio, TX 78204

   All Payments will be considered on time if received on or before the date indicated in the attached **Exhibit B**, Loan Schedule.

2. Sufficient Amounts. Each payment made pursuant to Article IV(B) and Article IV (B)(1) shall be sufficient to repay the total amount of principal and Accrued Interest becoming due and payable upon that date.

3. Acceleration of Loan Repayment. Should DEVELOPER, in the sole discretion of City, breach a material term of this Agreement and CITY terminates the Agreement, then the Loan Funds shall be due and payable to CITY no later than sixty (60) days following CITY's Notice of Termination to DEVELOPER.

4. 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, 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. If the Property Site is not subject to taxation for any reason, DEVELOPER can submit proof of such exemption in lieu of the above.

5. Late Payments. If a payment is received more than thirty (30) days after the scheduled payment date, a late payment fee of five-hundred dollars ($500) will be assessed to the DEVELOPER. The late payment fee will be due immediately. Payment of the late payment fee by DEVELOPER does not waive CITY'S rights regarding termination, suspension, or any other remedy available to CITY as a result of any breach by

DEVELOPER of any terms of this Agreement. Payment of the late payment fee by DEVELOPER shall not relieve DEVELOPER of its obligation to repay any and all disbursed loan funds made under this Agreement or any liability to CITY for actual damages due to CITY by virtue of any breach by DEVELOPER of any terms of this Agreement.

C. Any and all loan amounts shall be disbursed to DEVELOPER 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. The DEVELOPER understands and agrees that any expenditure made by the DEVELOPER 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 use of TIF, 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, priority of payment issues and/or unanticipated effects covered under legal doctrine of force majeure.

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 Tax Increment Fund (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 Loan Funds 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 Loan Funds. 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

A. 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.

B. The DEVELOPER shall allow the CITY and the Board access to the Project Property for inspections during and upon completion of construction, and to documents and records reasonably considered necessary by the CITY and/or the Board to assess the DEVELOPER's compliance with this Agreement.

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.

E. Any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either Party of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the Party to be charged.

ARTICLE IX. TERMINATION

A. Should DEVELOPER fail to timely meet the Commencement Date for the Project in accordance with Article III(B) above, at CITY's sole discretion, and with 30 days' notice to DEVELOPER, CITY may terminate the Agreement, in which instance any and all Loan Funds disbursed to DEVELOPER by CITY and TIRZ shall be repaid.

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, or 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 all Loan Funds disbursed to DEVELOPER by CITY and/or TIRZ shall be repaid. 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 Loan Funds made under this Agreement. CITY shall be entitled to the repayment of the Loan 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.

E. 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.

F. 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 Office P.O. Box 839966 San Antonio, TX 78283-3966
If intended for TIRZ Board, to:	Planning & Community Development Dept. Attn: Tax Increment Finance Unit 1400 S. Flores St. San Antonio, TX 78204
If intended for DEVELOPER, to:	THE NRP GROUP, LLC Attn: Debra Guerrero 200 Concord Plaza, Suite 900 San Antonio, TX 78216

ARTICLE XI. SPECIAL CONDITIONS AND TERMS

A. 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.

B. Termination of TIRZ. The Parties agree that, in the event that the CITY, acting in accordance with State law, terminates Reinvestment Zone #11 or adopts an ordinance that causes the termination date of Reinvestment Zone #11 to occur on a date earlier than provided in the ordinance that initially established the TIRZ, the CITY may amend this Agreement, in its sole discretion, to provide for the repayment of Loan Funds in accordance with the material terms and conditions of this Agreement.

C. Public Information. DEVELOPER acknowledges that this Agreement and all documents ancillary to it are public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public. Nothing in this Agreement or any document delivered pursuant to this Agreement waives an otherwise applicable exception to disclosure.

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 and Waivers 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 or Waivers 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 created by DEVELOPER for purposes of developing the Project or newly created entity resulting from a merger, acquisition or other corporate restructure or reorganization of DEVELOPER. Following the completion of construction of the Project, DEVELOPER shall also have the right to assign this agreement to any party that acquires the Project, subject to the CITY's prior written consent. In such any such cases, DEVELOPER shall give CITY no less than thirty (30) days prior written notice of the assignment or other transfer; the CITY's consent, which shall not be unreasonably withheld, conditioned or delayed, may be approved at the sole discretion of the City Manager or her designee. 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	Property Description
Exhibit B	Loan Repayment Schedule
Exhibit C	City Ordinance

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 Ordinance Number 2015-02-12____, dated February 12, 2015, and by DEVELOPER pursuant to the authority of its _____.

CITY OF SAN ANTONIO,
a Texas Municipal Corporation

_____
Sheryl L. Sculley
CITY MANAGER

DEVELOPER:
THE NRP GROUP, LLC

By: _____
Name: Debra Ann Guerrero
Title: Authorized Representative

ATTEST:

_____
Leticia Vacek
CITY CLERK

ATTEST (if required):

_____
Name:
Title:

APPROVED AS TO FORM:

_____
CITY ATTORNEY

TAX INCREMENT REINVESTMENT ZONE #11:

_____
Name:
BOARD CHAIRPERSON

ATTEST:

_____
Name:
BOARD VICE-CHAIRPERSON

Exhibit B - Loan Schedule *

Date	Amount Paid on Principal by Developer	Amount paid on Interest by Developer	Total Payment to City
December 31, 2016	$0	$0	$0
December 31, 2017	$0	$0	$0
December 31, 2018	$166,666.66	$10,000.00	$176,666.66
December 31, 2019	$166,666.67	$6,666.67	$173,333.34
December 31, 2020	$166,666.67	$3,333.33	$170,000.00
Total Repaid to Inner City TIF Fund	$500,000.00	$20,000.00	$520,000.00

* Accrued interest @ 2% fixed rate