RR
12/04/08
Item #46

AN ORDINANCE 2008-12-04-1105

AUTHORIZING AMENDMENTS TO THE TAX PHASE-IN AGREEMENT AND CHAPTER 380 ECONOMIC DEVELOPMENT LOAN AGREEMENT WITH VISTANA LTD TO EXTEND THE DATE REQUIRED TO COMPLETE CONSTRUCTION OF THE VISTANA PROJECT TO APRIL 30, 2009.

* * * * *

WHEREAS, on August 17, 2006, City Council approved a Tax Phase-In Agreement with Vistana LTD (the "Developer") for the construction of a $38 million mixed-use, market rate rental housing development located in downtown San Antonio that consists of nine floors of rental apartments, four floors of above ground parking including spaces available for public use and 30,000 square feet of retail space that will include a coffee shop, pharmacy, dry cleaner, restaurant and florist; and

WHEREAS, on December 14, 2006, City Council approved a Chapter 380 Economic Development Program Loan Agreement with the Develper in the amount of $1.8 million to assist with electrical infrastructure costs required to support this downtown project; and

WHEREAS, both the Tax Phase-In Agreement and Chapter 380 Loan Agreement (the "Agreements") required the Developer to complete the project by January 1, 2009; and

WHEREAS, due to construction delays caused by weather and other unforeseen circumstances, the Developer has requested amendments to the Agreements to reflect that the project will be completed by April 30, 2009; and

WHEREAS, the abatement period for the project under the Tax Phase-In Agreement has not yet commenced and no payments under the Chapter 380 Loan Agreement are due until substantial completion of the project; **NOW THEREFORE:**

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

SECTION 1. The terms and conditions of the First Amendments to the Tax Phase-In Agreement and the First Amendment to the Chapter 380 Economic Development Loan Agreement are hereby approved.

SECTION 2. The City Manager or her designee is authorized to execute a First Amendment to the Tax Phase-In Agreement and Chapter 380 Economic Development Loan Agreement with Vistana LTD in accordance with the terms and conditions of this ordinance. A copy of the amendments, in substantially final form, are attached to this ordinance as Exhibit "A" and Exhibit "B." The final amendments shall be filed with this ordinance upon execution.

RR
12/04/08
Item #46

SECTION 3. The amount of $300,000.00 is appropriated for this ordinance in Fund No. 20590000, entitled "Economic Development Initiatives," Cost Center No. 1604010001 entitled "Economic Development Initiatives," General Ledger No. 5201040, entitled "Fees to Professional Contractors." The Fiscal Yeat 2009 budget is amended to reflect this change.

SECTION 4. Payment not to exceed $300,000.00 is authorized to Vistana Ltd. in accordance with the terms and conditions of the Chapter 380 Loan Agreement and shall be encumbered upon the submission of 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 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 6. This ordinance shall be effective on and after the tenth day after passage.

PASSED AND APPROVED this 4th day of DECEMBER 2008.

M A Y O R

ATTEST:

City Clerk

APPROVED AS TO FORM: _____

for City Attorney

Request for COUNCIL ACTION

City of San Antonio

Agenda Voting Results - 46

Name:	7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 24, 25, 26, 29, 31, 32, 33, 34, 38, 39, 40, 41, 43B, 43C, 43D, 43E, 43F, 43G, 43H, 43I, 43J, 43K, 43L, 45, 46, 47, 48A, 48B, 49, 51, 52, 53, A, B, C, D
Date:	12/04/2008
Time:	01:50:29 PM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing amendments to the Tax Phase-In Agreement and 380 Economic Development Loan Agreement with Vistana LTD to extend the date required to complete construction to April 30, 2009. [Pat DiGiovanni, Deputy City Manager]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Phil Hardberger	Mayor		x				
Mary Alice P. Cisneros	District 1	x					
Sheila D. McNeil	District 2		x				
Jennifer V. Ramos	District 3		x				
Philip A. Cortez	District 4		x				
Lourdes Galvan	District 5		x				
Delicia Herrera	District 6	x				x	
Justin Rodriguez	District 7	x					x
Diane G. Cibrian	District 8		x				
Louis E. Rowe	District 9	x					
John G. Clamp	District 10		x				

RR
12/04/08
Item #46

EXHIBIT A: FIRST AMENDMENT TO THE TAX PHASE IN AGREEMENT BETWEEN THE CITY OF SAN ANTONION AND VISTANA LTD.

FIRST AMENDMENT TO THE TAX PHASE-IN AGREEMENT

BETWEEN THE CITY OF SAN ANTONIO AND VISTANA, LTD.

This FIRST AMENDMENT to the TAX PHASE-IN AGREEMENT (this "FIRST AMENDMENT") is entered into by and between the CITY OF SAN ANTONIO ("City") and VISTANA, LTD. ("DEVELOPER") together referred to as "the Parties."

RECITALS

A. City and DEVELOPER are parties to that certain TAX PHASE-IN AGREEMENT (the "Agreement") authorized by City of San Antonio Ordinance No. 2006-08-17-0917, passed and approved on August 17, 2006.

B. Prior to the effectiveness of this FIRST AMENDMENT, the AGREEMENT provided for certain deadlines, as described below, to complete the Project.

D. City and DEVELOPER desire to amend the AGREEMENT in accordance with the terms and conditions of this FIRST AMENDMENT.

E. All other provisions of the AGREEMENT shall remain in full force and effect.

RENEWAL

NOW THEREFORE, the Parties hereby agree and amend as follows:

1. Definitions. All capitalized terms used in this FIRST AMENDMENT without definition herein shall have the meanings assigned to such terms in the AGREEMENT.

2. Amendment. The Parties hereby agree to amend the AGREEMENT as follows:

(A) Section 3(A) is hereby amended by extending the projected substantial completion date from JUNE 1, 2008, to on or before APRIL 30, 2009.

(B) Section 5(A)(1) is hereby amended by extending the date JUNE 1, 2008, to APRIL 30, 2009.

(C) Section 5(H) is hereby amended by deleting the first sentence in its entirety and replacing with the following:

"DEVELOPER shall substantially complete construction of the real property improvements by April 30, 2009."

(D) Section 5(P)(1) is hereby amended by deleting the first sentence in its entirety and replacing with the following:

"make the minimum real property improvement investment and substantially complete construction by April 30, 2009;"

(E) Section 6(A) is hereby amended by deleting the first sentence in its entirety and replacing with the following:

"The Tax Phase-In Period (the "Term") for the Property improvements shall be for ten (10) years beginning the year following substantial completion of the property but in any case the term will start no later than January 1, 2009."

(F) Section 6(C) is hereby amended by extending the date JUNE 1, 2008, to APRIL 30, 2009.

(G) Section 7(A) is hereby amended by deleting the first sentence in its entirety and replacing with the following:

"If DEVELOPER fails to invest at least THIRTY EIGHT MILLION DOLLARS ($38,000,000.00) in real property improvements or substantially complete construction of those improvements by April 30, 2009, except if such failure is caused by a Force Majeure, as defined in Article 8, then subject to notice of default and right to cure (except as to Article 5, Paragraph O) City Council shall have the right to terminate this Agreement and the Term."

3. Effective Date. This FIRST AMENDMENT shall be effective upon passage of a duly authorized ordinance of the City Council of the City of San Antonio which shall be attached hereto and made a part of this FIRST AMENDMENT.

4. No Other Changes. Except as specifically set forth in this FIRST AMENDMENT, all of the terms and conditions of the AGREEMENT shall remain the same and are hereby ratified and confirmed. The AGREEMENT shall continue in full force and effect and with this FIRST AMENDMENT shall be read and construed as one instrument.

5. Choice of Law. This FIRST AMENDMENT shall be construed in accordance with and governed by the laws of the State of Texas.

6. Counterparts. This FIRST AMENDMENT may be executed in any number of counterparts, but all such counterparts shall together constitute but one instrument. In making proof of this FIRST AMENDMENT it shall not be necessary to produce or account for more than one counterpart signed by each party hereto by and against which enforcement hereof is sought.

Signatures appear on next page.

WITNESS HEREOF, the parties hereto have executed in duplicate originals this FIRST AMENDMENT on the _____ day of _____ 2008.

CITY OF SAN ANTONIO
a municipal corporation

_____
Sheryl L. Sculley
City Manager

ATTEST:

_____
Leticia Vacek
City Clerk

VISTANA, LTD.,
a Texas limited partnership

By: Vistana Management, LLC,
a Texas limited liability company,
its General Partner

By: _____
Name: _____
Title: _____

ATTEST:

_____
Name: _____
Title: _____

APPROVED AS TO FORM:

_____
Michael D. Bernard
City Attorney

RR
12/04/08
Item #46

EXHIBIT B: FIRST AMENDMENT TO THE ECONOMIC DEVELOPMENT LOAN AGREEMENT

FIRST AMENDMENT TO THE ECONOMIC DEVELOPMENT LOAN AGREEMENT

BETWEEN THE CITY OF SAN ANTONIO AND VISTANA LTD.

This FIRST AMENDMENT to the ECONOMIC DEVELOPMENT LOAN AGREEMENT (this "FIRST AMENDMENT") is entered into by and between the CITY OF SAN ANTONIO ("City") and VISTANA, LTD. ("DEVELOPER") together referred to as "the Parties."

RECITALS

A. City and DEVELOPER are parties to that certain ECONOMIC DEVELOPMENT LOAN AGREEMENT (the "Agreement") authorized by City of San Antonio Ordinance No. 2006-12-14-1424, passed and approved on December 14, 2006.

B. Prior to the effectiveness of this FIRST AMENDMENT, the AGREEMENT provided for certain deadlines, as described below, to complete the Project.

D. City and DEVELOPER desire to amend the AGREEMENT in accordance with the terms and conditions of this FIRST AMENDMENT.

E. All other provisions of the AGREEMENT shall remain in full force and effect.

RENEWAL

NOW THEREFORE, the Parties hereby agree and amend as follows:

1. Definitions. All capitalized terms used in this FIRST AMENDMENT without definition herein shall have the meanings assigned to such terms in the AGREEMENT.

2. Amendment. The Parties hereby agree to amend the AGREEMENT as follows:

(A) Section 2(C) is hereby amended by deleting the first sentence in its entirety and replacing with the following:

"CONTRACTOR shall complete the Project no later than April 30, 2009."

(B) Section 3 (B), is hereby deleted in its entirety and replaced with the following:

Loan Disbursement. City shall make available to CONTRACTOR an Economic Development Program Loan in the total amount of ONE MILLION EIGHT HUNDRED THOUSAND DOLLARS ($1,800,000.00), which shall be disbursed to CONTRACTOR in six annual payments of THREE HUNDRED THOUSAND DOLLARS ($300,000.00) each,

commencing on the thirtieth (30th) day after presentation to the City of a final Certificate of Occupancy for the Project. A temporary Certificate of Occupancy shall not commit the City to disburse any funds. Subequent annual payments will be made on the anniversary date (day and month) of the first payment in years 2010 through 2014.

3. Effective Date. This FIRST AMENDMENT shall be effective upon passage of a duly authorized ordinance of the City Council of the City of San Antonio which shall be attached hereto and made a part of this FIRST AMENDMENT.

4. No Other Changes. Except as specifically set forth in this FIRST AMENDMENT, all of the terms and conditions of the AGREEMENT shall remain the same and are hereby ratified and confirmed. The AGREEMENT shall continue in full force and effect and with this FIRST AMENDMENT shall be read and construed as one instrument.

5. Choice of Law. This FIRST AMENDMENT shall be construed in accordance with and governed by the laws of the State of Texas.

6. Counterparts. This FIRST AMENDMENT may be executed in any number of counterparts, but all such counterparts shall together constitute but one instrument. In making proof of this FIRST AMENDMENT it shall not be necessary to produce or account for more than one counterpart signed by each party hereto by and against which enforcement hereof is sought.

Signatures appear on next page.

WITNESS HEREOF, the parties hereto have executed in duplicate originals this FIRST AMENDMENT on the _____ day of _____ 2008.

CITY OF SAN ANTONIO
a municipal corporation

_____
Sheryl L. Sculley
City Manager

ATTEST:

_____
Leticia Vacek
City Clerk

VISTANA, LTD.,
a Texas limited partnership

By: Vistana Management, LLC,
a Texas limited liability company,
its General Partner

_____
Name: _____
Title: _____

ATTEST:

_____
Name: _____
Title: _____

APPROVED AS TO FORM:

_____
Michael D. Bernard
City Attorney

Agenda Item # 46
Council Meeting Date: 12/4/2008
RFCA Tracking No: R-4238

CITY OF SAN ANTONIO
Request for Council Action

DEPARTMENT: City Manager's Office

COUNCIL DISTRICT(S) IMPACTED:
Council District 1

SUBJECT:
Amendments to Vistana Tax Phase-In and Loan Agreement

SUMMARY:

This ordinance authorizes the City Manager to amend the Tax Phase-In and Loan Agreements with Vistana Ltd. to extend the completion date for this $38 million mixed-use Downtown project to April 30, 2009, due to weather and other unforeseen circumstances that have delayed construction. The 10-year tax abatement term will still begin January 1, 2009 and the loan disbursement schedule will be adjusted forward into 2009 to reflect the new project completion date. These amendments do not change the nature or amount of incentives previously approved for this project.

BACKGROUND INFORMATION:
Vistana, Ltd. is a Texas Liability Partnership and its sole general partner is Vistana Management, LLC. The Vistana project is currently under construction at 100 N. Santa Rosa directly east of Milam Park. This $38 million mixed-use, market rate rental housing development will be the first of its kind on the near west side of Downtown. The project will complement the development of the new Smithsonian Museo Americano and become a catalyst for further development in the western sector of the City.

This development project includes nine floors of 246 rental apartments ranging in price from $635.00 per month for the smallest efficiency apartment up to $3,250.00 per month for a 3-bedroom penthouse unit on the top floor. Sizes vary from 491 square feet to over 2,437 square feet. More than half of the units are priced under $1,000.00 in rent per month making them affordable for individuals with an annual income of $36,000.00 or more. The first floor of the project will include 30,000 square feet of retail space that will include services such as printing/copying, coffee shop, pharmacy, dry cleaners, restaurant, florist, etc. The project will also include four floors of above ground parking containing 530 spaces, with 190 spaces available for public use.

On August 17, 2006, City Council approved a 10-year, 100% tax abatement valued at approximately $1,693,449.00 for Vistana, Ltd. on the planned $38,000,000.00 in real property improvements. That Agreement has been signed and executed. On December 14, 2006 City Council approved a $1,800,000.00 loan to assist with electrical infrastructure costs required to support this downtown project. The Loan Agreement has also been signed, but no payments have been made as of yet pending completion of the project.

ISSUE:

The Tax Phase-In Agreement required a minimum investment of $38,000,000.00 by June 1, 2008, and the 10-year tax abatement term will begin no later than January 1, 2009. The Loan Agreement also requires a minimum investment of $38,000,000.00 to be made no later than January 1, 2009. Due to construction delays caused by weather and other unforeseen circumstances, Vistana, Ltd. has requested that these Agreements be amended to reflect that the project and the $38,000,000.00 investment will now be completed by April 30, 2009. These amendments, if approved, will not affect the previously approved value of the tax abatement and loan incentives for this project. The 10-year tax abatement term would still begin on January 1, 2009, as currently stated in the Tax Phase-In Agreement. The loan disbursement schedule would be adjusted forward with the first disbursement of $300,000.00 to occur within 30 days following receipt of a Certificate of Occupancy.

ALTERNATIVES:
The amendments will allow Vistana Ltd. to stay in compliance with both agreements and obtain the incentives approved by City Council for this project.

FISCAL IMPACT:
Amending the Tax Phase-In Agreement and the Loan agreement will not change the fiscal impact of this project. Following the completion of construction of the Vistana project, the City will make available to Vistana, Ltd. an Economic Development Program loan in the amount of $1,800,000.00, to be paid in six annual disbursements of $300,000.00 commencing on the thirtieth (30th) day from the presentation to the City of a Certificate Occupancy for the project. The source of funding for the loan payments will be from the future annual cash transfers to the City from the CPS Energy Community Infrastructure and Economic Development Fund. The first loan disbursement of $300,000.00 is included in the FY 2009 Adopted Budget.

Repayment of the Economic Development Program Loan is to be made in six annual disbursements of $300,000.00 following the end of the 10-year tax phase-in term on December 31, 2018. The first payment on the loan will be due January 30, 2019. The loan will also start accruing interest beginning January 1, 2019 at a rate equal to the City's average annual yield on its investment portfolio. The final payment on the loan will be January 30, 2024.

Over a 20-year period, the net fiscal benefit to the City from the Vistana project is approximately $3,269,306.00.

RECOMMENDATION:
Staff recommends approval of this ordinance authorizing amendments to the Tax Phase-In and Loan Agreements between the City and Vistana, Ltd.

ATTACHMENT(S):

File Description	File Name

Tax Phase-In Amendment	First Amdt-Tax Phase-In Agmt 20081110.DOC
Loan Agreement Amendment	First Amdt-380 Loan Agmt 20081110.DOC
Voting Results	
Ordinance/Supplemental Documents	200812041105.pdf

APPROVED FOR COUNCIL CONSIDERATION:
Pat DiGiovanni Deputy City Manager