XPR
12/5/13
Item No. 33

AN ORDINANCE 2013-12-05-0862

APPROVING A CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM LOAN AGREEMENT FOR UP TO $700,000.00 WITH MERCHANT ICE LOFTS LP AND THE BOARD OF TAX INCREMENT REINVESTMENT ZONE NUMBER 11, INNER CITY TIRZ, FOR THE MERCHANT ICE LOFTS PROJECT AND AMENDING THE TIRZ PROJECT AND FINANCE PLANS.

* * * * *

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code, the City of San Antonio ("City) is authorized to establish and provide for the administration of one or more programs, including programs for making loans and grants of public money and providing personnel and services of the municipality, to promote state or local economic development and to stimulate business and commercial activity in the municipality; and

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

WHEREAS, Merchant Ice Lofts LP ("Developer") is engaged in economic development by investing $33 million in a multi-family housing development project at 1305 E. Houston located within the boundaries of the Inner City TIRZ ("Project"); and

WHEREAS, Developer is seeking an economic development loan for the purpose of defraying costs associated with undertaking the Project which will revitalize a vacant and underutilized property in the Inner City TIRZ; and

WHEREAS, the Board is authorized to designate TIRZ funds consistent with its Project Plan and Finance Plan through a Chapter 380 Economic Development Program Loan Agreement (the "Agreement") and is authorized to direct the City to pay for such projects from the TIRZ's tax increment funds; and

WHEREAS, the City, the Inner City TIRZ Board of Directors (the "Board"), and the Developer desire to enter into the Agreement and have identified $700,000.00 in available tax increment funds for the Project; and

WHEREAS, the Board has authorized the commitment of tax increment funds for the Agreement in order to promote local economic development, and to stimulate business and commercial activity, within the Inner City TIRZ.; **NOW THEREFORE:**

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

XPR
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Item No. 33

SECTION 1. The City Council approves a Chapter 380 Economic Development Program Loan Agreement for up to $700,000.00 with Merchant Ice Lofts LP and the Inner City TIRZ Board for the Merchant Ice Lofts Project. The City Manager or her designee is authorized to execute the Agreement, a copy of which is set out in substantially final form as **Attachment I** and to proceed with amending the Project Plan and Finance Plan to include this Project.

SECTION 2. The City Manager or her designee is authorized to execute such other documents as are necessary to carry out the intent of this Ordinance as approved and recommended by the City Attorney.

SECTION 3. Funding in the amount of $700,000.00 for this Ordinance is available for Fund 29086007, Cost Center 0703290001 and General Ledger 5201040, as part of the Fiscal Year 2014 Budget.

SECTION 4. Payment not to exceed the budgeted amount is authorized over three years to Merchants Ice Lofts LP and should be encumbered with a purchase order.

SECTION 5. Funds received during the repayment of this loan will be deposited into Fund 29086007, Cost Center 0703290001 and General Ledger 4901301.

SECTION 6: 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 7. This Ordinance shall be effective immediately upon passage by eight affirmative votes; otherwise, it shall be effective on the tenth day after passage.

PASSED AND APPROVED this 5th day of December, 2013.

M A Y O R
for Julián Castro

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

Michael D. Bernard, City Attorney

Agenda Item:	**33**
Date:	12/05/2013
Time:	10:32:10 AM
Vote Type:	Motion to Approve
Description:	An Ordinance approving a Chapter 380 Economic Development Loan Agreement with the Board of Tax Increment Reinvestment Zone Number Eleven, Inner City TIRZ, and Merchants Ice Lofts LP in the amount of $700,000.00 and amending the Inner City TIRZ Project and Finance Plans for the Merchant Ice Lofts Project. [Carlos J. Contreras, III, Assistant City Manager; Lori Houston, Director, Center City Development Office].
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor	x					
Diego Bernal	District 1		x				x
Ivy R. Taylor	District 2		x			x	
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Carlton Soules	District 10		x				

ATTACHMENT I

STATE OF TEXAS	§	**CHAPTER 380 ECONOMIC**
	§	**DEVELOPMENT LOAN AGREEMENT**
	§	**OF THE CITY OF SAN ANTONIO**
COUNTY OF BEXAR	§	**AND INNER CITY TIRZ #11**

This Chapter 380 Economic Development Loan Agreement ("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 Inner City Tax Increment Reinvestment Zone #11 (the "TIRZ'), acting by and through its Board of Directors ("Board") and Merchant's Ice Lofts, LP ("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 Inner City TIRZ #11 Zone, which will consist of: a multifamily housing development with approximately 262 units including the rehabilitation of existing underutilized and abandoned industrial and historic buildings (the "Project"); and

WHEREAS, once completed the Project is anticipated to result in the investment of approximately $33 million in real and/or personal property improvements within the TIRZ no later than two years following the Effective Date of this Agreement; and

WHEREAS, DEVELOPER is seeking a $700,000.00 loan from the TIRZ Tax Increment Fund ("TIF"), for environmental abatement for the Project; and

WHEREAS, the CITY and the TIRZ have funds which can be made available to DEVELOPER 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 approved the use of $700,000.00 of TIF from the TIRZ for this Agreement on October 25, 2013; and

WHEREAS, the CITY Council has authorized the City Manager or her designee to enter into this Agreement in accordance with City Ordinance No._____, passed and approved on _____, 2013 to grant and loan certain funds as described herein and to amend the Project and Finance Plans to include this Project; **NOW THEREFORE**:

The Parties severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein 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 the TIRZ. The CITY and TIRZ are supporting the Project through this Agreement to provide a loan of TIF funds to be used for Project Costs, as defined by the TIF Act, Texas Tax Code Ch. 311, specifically for environmental abatement and remediation of conditions that contaminate the site and structures on which the Project is located including any environmental impact or other required studies. This Project has been added to the Project and Finance Plans for the Inner City TIRZ, which Plans are incorporated herein by reference for all purposes.

ARTICLE II. AGREEMENT PERIOD

This Agreement shall commence upon the Effective Date listed on the signature page and terminate upon the earlier of: (A) the repayment of all loan funds including interest and any penalties by DEVELOPER to the CITY; (B) January 31, 2020 or (C) termination of this Agreement as otherwise provided herein (the "Term"). Notwithstanding the Effective Date, any and all funding obligations using Tax Increment Funds in this Agreement are 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. The Project.

1. Investment. DEVELOPER shall invest $33 million (the "Minimum Investment") in the Project. The Minimum Investment shall be made in real and personal property improvements. The Minimum Investment shall include expenditures required to acquire the property, rehabilitate and/or demolish existing structures and build a five story apartment building and structured parking facility with approximately 262 spaces. For purposes of this Agreement, the Minimum Investment shall include expenditures made by DEVELOPER, directly or indirectly, to develop the Project, including: architectural, engineering and surveying expenses, financing costs and fees, construction period interest, property acquisition, closing and settlement expenses, demolition, construction, site preparation, paving, landscaping and utilities and other Project-related expenses.

2. Construction. DEVELOPER shall commence construction and demolition at the Project Site on or before December 31, 2014 and shall use commercially reasonable efforts to complete construction no later than two years after commencement (the "Construction Period"), 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.

a. DEVELOPER shall make available to CITY progress reports on the Project and Project Site as generated by DEVELOPER during the Construction Period. In addition, should CITY request a progress report, DEVELOPER shall provide such report within 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 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. 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.

ARTICLE IV. ECONOMIC DEVELOPMENT PROGRAM LOAN

The incentives offered by the CITY to the DEVELOPER in this Agreement shall be in compliance with the Center City Housing Incentive Policy. Should any financial incentive provided in this Article exceed the maximum amount authorized in the Policy, then that award shall be automatically amended to provide only the amount authorized by the Policy.

A. Economic Development Program Loan. CITY and TIRZ are providing DEVELOPER with a Chapter 380 Economic Development Program Loan in a cumulative amount not to exceed $700,000.00 ("Loan Funds"). The purpose of the Loan from the TIRZ TIF fund is to provide an economic incentive to facilitate the abatement of environmental issues for the Project. The funds

made available to DEVELOPER through this Agreement are made solely from lawfully available funds that have been appropriated by CITY and the TIRZ Board.

1. Disbursement. The Initial Disbursement is contingent upon the following:

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

   (b) Completion and submission to CITY by DEVELOPER of the Real Estate Lien Note and Deed of Trust for1305 East Houston Street to be attached and incorporated herein as Exhibits A & B respectively; and

   (c) 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 including any potential federal government funding to complete the Project on or prior to December 31, **2016;** and

   (d) DEVELOPER acquires ownership of the property located at 1305 East Houston Street to be utilized for the Project ("Project Property").

   (e) Confirmation of second lien position for the City on the Project Property for this Agreement.

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. 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 the purpose of environmental abatement and any other Project Costs allowed under 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 C, 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 pay interest on the outstanding amount beginning **two years after the commencement of construction on the project 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."

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

3. Acceleration of Loan Repayment. Should DEVELOPER, in the sole discretion of CITY, fail to make a payment when due under the Promissory Note and Deed of Trust or otherwise breach a material term of this Agreement or of any other Agreement with the CITY for this Project and CITY terminates the Agreement, then the Loan Funds shall be due and payable to CITY no later than 60 days following CITY's Notice of Termination to DEVELOPER. In addition, CITY may exercise its rights and remedies set forth in the Promissory Note and Deed of Trust.

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.

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 Section 3 above.

B. Neither CITY nor TIRZ will be liable to DEVELOPER or 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 loan disbursements from the Tax Increment Fund 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 funds associated with this Agreement. DEVELOPER shall retain such records and any supporting documentation for the greater of: (1) five years from termination of the Agreement; 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"). 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 give the CITY and TIRZ the right to suspend or terminate this Agreement as provided for herein, or any portion thereof, for reason of default. 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.

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 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. Neither CITY nor TIRZ shall 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 commence demolition/construction associated with the Project in accordance with Article III above, this Agreement shall terminate automatically and any and all incentives offered to DEVELOPER by CITY and TIRZ under this Agreement shall extinguish. CITY and TIRZ shall have the right to terminate this Agreement in whole or in part should DEVELOPER fail to perform under the terms and conditions herein and fail to cure a default in accordance with Article VIII above. Such Termination may occur at any time prior to the end of the Term of this Agreement. CITY and TIRZ may, upon issuance to DEVELOPER of written notice (the "Notice of Termination"), terminate this Agreement, withhold further loan disbursements to DEVELOPER, and/or exercise all available rights and remedies including as provided in the Promissory Note and Deed of Trust. A Notice of Termination shall include: (1) the reasons for such termination; (2) the effective date of such termination; and, (3) in the case of partial termination, the

portion of the Agreement to be terminated.

B. Should CITY and/or TIRZ terminate this Agreement, then CITY shall have the right to recapture any and all disbursed Loan Funds. CITY shall be entitled to the repayment of the recaptured funds within 60 calendar days from the date of the Notice of Termination.

C. In addition to the above, this Agreement may be terminated in whole or in part 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, the effective date and in the case of partial termination, the portion to be terminated; or

2. By the DEVELOPER upon written notification to CITY, setting forth the reasons of such termination, a proposed pay-back plan of any loan funds disbursed, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of partial termination, CITY determines in its sole discretion that the remaining portion of the Agreement will not accomplish the purpose for which the Agreement was made, then CITY may terminate the Agreement in its entirety.

D. Notwithstanding any exercise by CITY of its right of suspension under Article VIII of this Agreement, or of early termination pursuant to this Article IX, DEVELOPER shall not be relieved 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.

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 loan funds and CITY's rights and remedies under the Promissory Note and Deed of Trust, if DEVELOPER defaults under the material terms of this Agreement and fails to cure such default within the cure period set forth above. However, such termination and repayment shall be subject to any and all lawful defenses, counterclaims, offsets, settlements, deductions or credits to which DEVELOPER may be entitled.

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 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 business days following its deposit into the custody of the United States Postal Service or one 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 10 calendar days advance written notice of such change of address in accordance with the Agreement.

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 Board, to: Planning & Community Development Dept.
Attn: Tax Increment Finance Unit
1400 S. Flores St.
San Antonio, TX 78204

If intended for DEVELOPER, to: San Antonio Housing Trust
Attn: John Kenny
2515 Blanco Rd.
San Antonio, TX 78212

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 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.

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 amounts granted by 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.

C. 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.

D. 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 X. INDEMNIFICATION

A. The DEVELOPER covenants and agrees to FULLY DEFEND, INDEMNIFY and HOLD HARMLESS, the CITY (and the elected officials, employees, officers, directors, and representatives of the CITY), the BOARD (and the officials, employees, officers, directors, and representatives of the BOARD), and any PARTICIPATING TAXING ENTITY (and the elected officials, employees, officers, directors, and representatives of any such entity), individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury or death and property damage, made upon the CITY, BOARD, and/or upon any PARTICIPATING TAXING ENTITY directly or indirectly arising out of, resulting from or related to the DEVELOPER'S activities under this AGREEMENT, including any acts or omissions of the DEVELOPER, any agent, officer, contractor, subcontractor, director, representative, employee, consultant or sub-consultants of the DEVELOPER, and their respective officers, agents, employees, directors and representatives while in the exercise of the rights or performance of the duties under this AGREEMENT, all without, however, waiving any governmental immunity available to the CITY, the BOARD, or any PARTICIPATING TAXING ENTITY under Texas Law and without waiving any defenses of the Parties under Texas, Federal, or International Law. THE DEVELOPER SHALL ALSO INDEMNIFY, DEFEND AND HOLD THE PARTICIPATING TAXING ENTITIES HARMLESS FROM ANY CLAIMS, DAMAGES AND LIABILITY OF EVERY KIND, INCLUDING ALL EXPENSES OF LITIGATION, ATTORNEY'S FEES, AND PENALTIES ARISING FROM POLLUTION OF THE PROJECT PROPERTY BY DEVELOPER, OR THE FAILURE OF DEVELOPER TO COMPLY WITH LOCAL, STATE OR FEDERAL ENVIRONMENTAL LAWS OR REGULATIONS. THE INDEMNITY PROVIDED FOR IN THE FOREGOING PARAGRAPHS SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE CITY, ITS OFFICERS OR EMPLOYEES IN INSTANCES WHERE SUCH NEGLIGENCE CAUSES PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE, EXCEPT TO THE EXTENT PROVIDED BELOW. IF DEVELOPER AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS, FEDERAL, OR INTERNATIONAL LAW.

B. DEVELOPER shall, and does hereby agree to DEFEND, INDEMNIFY and HOLD HARMLESS the CITY, and the BOARD and their respective agents and employees from and against all encumbrances, claims, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, covenants, controversies, agreements, demands, damages, losses, liens, causes of action, suits, judgments, and attorney fees of any kind or nature whatsoever which are asserted within two years of the completion date of the PROJECT by any person or entity for penalties or sums due any worker or agency for services, labor or materials furnished for the PROJECT. DEVELOPER'S INDEMNITY obligations to the CITY under this INDEMNIFICATION shall be limited to all encumbrances, claims, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, covenants, controversies, agreements, demands, damages, losses, liens, causes of action, suits, judgments, and attorney fees of any kind or nature whatsoever by any person or entity for violations of Chapter 2258 of the Texas Government Code or for any sums or penalties due any worker or agency for labor furnished for the PROJECT. To the extent that this INDEMNIFICATION conflicts with the INDEMNIFICATION provisions in Paragraph A above, the provisions in Paragraph A control over those set forth in this Paragraph. Prior to expending any money that DEVELOPER would be obligated to INDEMNIFY, the CITY or the BOARD shall send written notice to DEVELOPER describing in reasonable detail the claim and allowing DEVELOPER to cure such claim within 15 calendar days of receiving the notice.

C. The DEVELOPER shall advise the CITY, the BOARD, and any PARTICIPATING TAXING ENTITY in writing within 24 hours of any claim or demand against the CITY, the BOARD, or any PARTICIPATING TAXING ENTITY related to or arising out of the DEVELOPER'S activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at the DEVELOPER's cost to the extent required under the INDEMNITY in this Paragraph. The CITY, the BOARD, and/or any PARTICIPATING TAXING ENTITY shall have the right, at their option and at their own expense, to participate in such defense without relieving the DEVELOPER of any of its obligations.

D. In any and all claims against any party indemnified hereunder by any employee of DEVELOPER, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Grantee or any subcontractor under worker's compensation or other employee benefit acts.

E. THE PROVISIONS OF THIS INDEMNITY ARE SOLELY FOR THE BENEFIT OF THE PARTIES AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

ARTICLE XI. NONDISCRIMINATION AND SECTARIAN ACTIVITY

A. DEVELOPER shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

B. None of the performances rendered by DEVELOPER under this Agreement shall involve, and

no portion of the funds 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 Section in all agreements entered into by DEVELOPER associated with the funds made available through this Agreement.

ARTICLE XII. 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 funds 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.

C. CITY will have the right to suspend or terminate this Agreement in accordance with Articles VIII and 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 any money it has received from CITY for performance of the provisions of this Agreement if CITY suspends or terminates this Agreement for reasons enumerated in this Article.

ARTICLE XI. 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. DEVELOPER shall submit a copy of such notice to CITY within 30 calendar days after receipt. No funds 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 claim litigation which arise out of DEVELOPER's operations on the Project, including without limitation, landlord tenant disputes, personal injury actions (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 XII. 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. If 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 XIII. 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 both Parties to this Agreement and evidenced by passage of a subsequent City ordinance, as to the City's approval.

B. It is understood and agreed by the Parties that performances 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, Chapter 311 of the Texas Tax Code known as the TIF Act 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.

D. Construction Schedule. Notwithstanding the above, the Construction Schedule may be amended by approval of the Board and the City, as evidenced by an agreement in writing between the Board and the Director of the Department of the City responsible for overseeing the TIF Unit (the "TIF Director") as long as the overall TIRZ Final Project Plan and Final Finance Plans are not materially changed by such amendment.

ARTICLE XIV. 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).

ARTICLE XV. DEBARMENT

By signing this Agreement, DEVELOPER certifies that it will not award any funds 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 XVI. RIGHTS UPON DEFAULT

The Parties expressly understand and agree 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 XVII. NON-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 either of such cases, DEVELOPER shall give CITY no less than 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 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 of 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 a check or any other form of payment made payable only to the DEVELOPER.

ARTICLE XVIII. RELATIONSHIP OF PARTIES

DEVELOLPER is an independent contractor. Nothing contained herein shall be deemed or construed by the Parties, or by any third party, as creating the relationship of employer and employee, officer, principal and agent, partners, joint ventures or any other similar such relationship between the Parties. As between the CITY, the DEVELOPER, the Board, and any Participating Taxing Entity, the DEVELOPER is solely responsible for compensation payable to any employee, contractor, or subcontractor of the DEVELOPER, and none of the DEVELOPER's employees, contractors, or subcontractors will be deemed to be employees, contractors, or subcontractors of the City, the Board, or any Participating Taxing Entity as a result of this Agreement. To the extent permitted by Texas law, no director, officer, employee or agent of the CITY, the Board, or any other Participating Taxing Entity shall be personally responsible for any liability arising under or growing out of this Agreement.

ARTICLE XIX. CONFLICT OF INTEREST

A. The DEVELOPER acknowledges that it is informed that the Charter of the CITY and its Ethics Code prohibit a CITY officer or employee, as those terms are defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the CITY or any CITY agency. An officer or employee has a "prohibited financial interest" in a contract with the CITY or in the sale to the CITY of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a CITY officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns 10% or more of the voting stock or shares of the business entity, or 10% or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a CITY contract, a partner or a parent or subsidiary business entity.

B. The DEVELOPER warrants and certifies, and this contract is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the CITY. The DEVELOPER further warrants and certifies that the DEVELOPER has tendered to the CITY a **Discretionary Contracts Disclosure Statement** in compliance with the CITY's Ethics Code. DEVELOPER covenants that neither it nor any member of its governing body or of its staff presently has any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement and that, no persons having such interest shall be employed or appointed as a member of its staff. DEVELOPER further covenants that no member of its staff shall possess any interest in, or use their position for, a purpose that is or gives the appearance of being motivated by desire for private gain for themselves or others, particularly those with which they have family, business, or other ties.

ARTICLE XX. ENTIRE AGREEMENT

A. All oral and written agreements between 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. Each of the Attachments listed below is an essential part of the Agreement, which governs the rights and duties of the Parties:

Exhibit A – Real Estate Lien Note

Exhibit B – Deed of Trust

Exhibit C – Loan Schedule

ARTICLE XXI. SEVERABILITY

If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the CITY, then and in that event it is the intention of the Parties that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the Parties that in lieu of each clause or provision of this Funding Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

DRAFT

Signatures on the next page

IN WITNESS THEREOF, the Parties have made and executed this Agreement, to be effective on the date of the last signature below ("Effective Date").

CITY OF SAN ANTONIO, a Texas municipal corporation

_____
Sheryl Sculley
City Manager

Date: _____

ATTEST/SEAL:

_____
Leticia Vacek
City Clerk

Date: _____

APPROVED AS TO FORM:

_____
Michael D. Bernard
City Attorney

Date: _____

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

_____
Ivy Taylor
Chairwoman, Board of Directors

Date: _____

DEVELOPER, _____

By _____,
Managing Partner

_____
(Name)
(Title)

Date: _____

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Exhibit C - Loan Schedule

Date	Amount Paid on Principal by Developer	Amount paid on Interest by Developer	Total Payment to City
December 31, 2014	$0	$0	$0
December 31, 2015	$0	$0	$0
December 31, 2016	$0	$0	$0
December 31, 2017	$228,728.27	$14,000.00	$242,728.27.
December 31, 2018	$233,302.84	$9,425.43	$242,728.27
December 31, 2019	$237,968.89	$4,759.38	$242,728.27
Total Repaid to Inner City TIF Fund	$700,000.00	$28,184.81	$728,184.81

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