

**FIRST AMENDMENT TO THE AMENDED AND RESTATED ECONOMIC
DEVELOPMENT GRANT AGREEMENT OF THE CITY OF SAN ANTONIO AND
TAX INCREMENT REINVESTMENT ZONE NUMBER 30**

This First Amendment (this “*Amendment*”) to the “Amended and Restated Economic Development Agreement of the City of San Antonio and Tax Increment Reinvestment Zone Number 30” 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 NUMBER 30, SAN ANTONIO, TEXAS, KNOWN AS THE WESTSIDE TIRZ (the “*TIRZ*”), a tax increment reinvestment zone created by the City pursuant to Chapter 311 of the Texas Tax Code and acting by and through its Board of Directors; and IRON & STEEL LOFTS, L.L.C., a Texas limited liability company (hereinafter referred to as “*GRANTEE*”) and whom together may sometimes be referred to herein as the “*Parties*.”

WITNESETH:

WHEREAS, GRANTEE developed a mixed-use project located within the city limits of San Antonio that consists of 67 residential units and at least 2,500 square-feet of commercial space located at 1401 South Flores Street (the “*Project*”); and

WHEREAS, the Project includes the former site and building of the Penden Iron and Steel Company, and the Project included the preservation of a significant historic structure; and

WHEREAS, GRANTEE’s redevelopment of the Project received a Historic Tax Certification and Certificate of Appropriateness for Final Approval for its design from the City’s Historic and Design Review Commission (the “*HDRC*”) on November 3, 2010 (HDRC Case No. 2007-266), and therefore is eligible to receive an exemption of City property taxes levied on the Project for a period of time specified in existing City ordinances as per the Historic Tax Exemption Program through the Office of Historic Preservation; and

WHEREAS, on April 8, 2010, through City Ordinance No. 2010-04-08-0304, the City approved an Economic Development Program Grant Agreement (the “*Original Economic Development Agreement*”) to encourage development of the Project by authorizing a cash grant of \$109,000.00 and, in accordance with the City’s Inner-City Reinvestment Infill Policy, a waiver in the amount of \$117,000.00 of SAWS impact fees, and recommended to the Westside TIRZ Board of Directors (“*Board*”) consideration of reimbursement up to \$719,962.00 for the development of 69 rental units and 2,653 sq. feet of retail space to be located at 1401 South Flores Street; and

WHEREAS, the Original Economic Development Agreement was amended by City Ordinance 2010-12-09-1028 (the “*First Amendment*”) to modify and extend the deadlines for commencement and completion of construction of the Project; and

WHEREAS, the Original Economic Development Agreement, as amended by the First Amendment, was replaced by that certain “Amended and Restated Economic Development

Agreement of the City of San Antonio and Tax Increment Reinvestment Zone #30” (the “*Amended and Restated Agreement*”), pursuant to City Ordinance No.2011-05-19-0147 (passed and approved on May 19, 2011) and resolution of the Westside TIRZ Board;

WHEREAS, pursuant to the Amended and Restated Agreement, the City processed and remitted reimbursement of Westside TIRZ funds to GRANTEE in the combined amount of \$36,969.37 for tax years 2012 and 2013.

WHEREAS, GRANTEE has completed the Project in compliance with the requirements of the Amended and Restated Agreement, and now seeks to amend the Amended and Restated Agreement to reflect a change in ownership due to the conversion of the Project into a condominium regime pursuant to Texas law,

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties hereby agree as follows:

1.

The "*Effective Date*" of this Amendment as said term is used herein, shall be the date it is executed by all parties hereto.

Subsections of the Agreement described below shall be amended to reflect the addition of text shown **underlined** and the deletion of text marked with a **~~striketrough~~**, as follows:

2.

The second recital of the Amended and Restated Agreement shall be amended, as follows:

“WHEREAS, GRANTEE is engaged in an economic development project that will be located within the city limits of San Antonio that will consist of a mixed-use development structure consisting of 67 **residential** ~~rental~~ units and 2,500 square-feet of commercial space to be located at 1401 South Flores Street (the “*Project*”);”

3.

The first sentence of Section 1 of the Amended and Restated Agreement shall be amended, as follows:

“GRANTEE shall undertake the development of a mixed-use development structure consisting of no less than 67 **residential** ~~rental~~ units and 2500 square-feet of commercial space.”

4.

Section 3(A.)(2.) of the Amended and Restated Agreement shall be amended and restated, as follows:

“The TIRZ is providing SEVEN HUNDRED NINETEEN THOUSAND NINE HUNDRED SIXTY-TWO DOLLARS (\$719,962.00) in tax increment reimbursements **(the “TIF Funds”)** from the Tax Increment Fund (hereinafter defined), held by the City.

5.

Section 3 (B.)(ii) of the Amended and Restated Agreement shall be amended and restated, as follows:

“(ii) **Property Tax Increment Reimbursement.** Subject to the terms and conditions of this Agreement, for each tax year commencing with the 2012 tax year (begins on January 1, 2012) and then annually throughout the remainder of the term, reimbursements to GRANTEE shall occur in accordance with the following conditions.

- (a) **REIMBURSEMENT.** Payment of TIF Funds to GRANTEE are subject to availability and priority of payment, and are intended to reimburse all eligible and approved costs incurred in connection with the Project or expenses incurred by GRANTEE for performance of the GRANTEE obligations under the Agreement, subject to the maximum reimbursement amount of \$719,962.00 specified below. The Board cannot guarantee that available TIF Funds shall completely reimburse GRANTEE.
- (b) **MAXIMUM REIMBURSEMENT.** Following the Board's authorization, GRANTEE shall receive, in accordance with the Agreement, TIF Funds from the TIRZ in an amount not to exceed SEVEN HUNDRED NINETEEN THOUSAND NINE HUNDRED SIXTY-TWO DOLLARS (\$719,962.00).
- (c) **AVAILABLE TAX INCREMENT FUNDS.** The sole source of the funds to reimburse GRANTEE for the completion of Public Improvements resulting from the Project shall be the Available TIF Funds levied and collected for the TIRZ and deposited into the TIF fund, created and maintained by the City.
- (d) **REQUESTS FOR REIMBURSEMENT.** All requests for reimbursement from GRANTEE shall be initiated by the submission of an application for reimbursement to the Center City Development and Operations Department (such “***Application Form***” is attached hereto as “**Exhibit A**”, as shall be amended and updated as necessary), in accordance with the following requirements:
 - (i) GRANTEE shall annually submit: a completed Application Form and, for each tax year for which payment of the Annual Property Tax Increment Reimbursement (defined below) is sought: 1) evidence from the Bexar

County Tax Assessor indicating the amount of taxes paid to City for the Property from applicable property tax accounts, and 2) evidence that all taxes owed by GRANTEE on the portion of the Property owned by GRANTEE have been paid in full. Failure to submit the application and all other necessary information in accordance with this Section may delay the reimbursement payment.

- (ii) GRANTEE shall submit no more than one Application Form for reimbursement per tax year for the Project site and GRANTEE shall receive no more than one payment of the reimbursement per tax year.
 - (iii) It is expressly understood that the Property has been divided under a condominium regime and that owners of individual condominium units (both commercial and residential) shall be responsible for their respective payment of property taxes owed. It is further understood that, for purposes of calculating the Annual Property Tax Increment Reimbursement payments to GRANTEE, only those property taxes paid by condominium owners and by GRANTEE at the time the Application Form is received by CITY will be considered as available for reimbursement, pursuant to the Agreement. Individual condominium tax accounts which have not been paid at the time of the request will not be considered for reimbursement for the respective tax year, nor will they be retroactively reimbursed through future requests.
 - (iv) If GRANTEE and/or any individual condominium tax accounts subsequently receive a property tax refund as a result of a tax protest (or otherwise) through the Bexar County Appraisal District, the amount of the refund will be deducted from the following tax year's reimbursement payment. The foregoing shall only apply if the subject property tax account was paid in full and TIF Funds were, for said account, paid to GRANTEE as reimbursement hereunder.
- (e) **Processing of Payment Requests.** TIF Funds shall be made available to GRANTEE after the deposit of tax increment payment to the TIF Fund (which shall not be unreasonably delayed by City), subject to availability, priority of payment and requirements herein. Reimbursements for each tax year commencing with the 2014 tax year and then annually throughout the remainder of the term shall be made to GRANTEE for an amount equal to 90% (or the current participation level of the City in the TIRZ at the time of application) of: (a) the actual amount of real property taxes paid to City with respect to the Property at the time of the request for the immediately preceding tax year, *less* (b) the base value of \$9,223.58, which represents the amount of real property taxes paid by GRANTEE to City with respect to the Property for the 2010 tax year based on City's then-adopted tax rate (the result being referred to herein as the "***Annual Property Tax Increment Reimbursement***").
- (f) **Partial Payments.** If TIF Funds are not available in an amount sufficient to make payments in full when the payments are due under this Agreement, partial payment

shall be made in the order of priority above, and the remainder shall be paid as TIF Funds become available. No fees, costs, expenses or penalties shall be paid on any late payment.

6.

Section 3.B.(iv) of the Amended and Restated Agreement shall be amended, as follows:

“(iv) **Obligation to Pay Taxes.** It is understood that GRANTEE shall continue to pay all taxes owed on any portion of the Property owned by GRANTEE, as required by law. **However, the Parties acknowledge that the Property has been divided under a condominium regime and owners of the individual condominium units (both commercial and residential) shall be responsible for their respective payment of property taxes owed.** Taxes owed or paid shall be determined by the Bexar County Appraisal District. Prior to TIRZ disbursing funds under Section 3.B.(ii), GRANTEE must provide to City evidence indicating that all taxes owed by GRANTEE on the portion of the Property owned by GRANTEE have been paid in full for the tax year for which payment of the Annual Property Tax Increment Reimbursement is sought. If, during the Term of this Agreement, GRANTEE allows its ad valorem taxes due on the portion of the Property owned by GRANTEE to become delinquent and fails to timely and property follow the legal procedures for the protest and/or contest of the taxing value, then no future payments under the Agreement shall be disbursed and the City and TIRZ’s remedies under this Agreement shall apply.”

7.

Except as specifically provided to the contrary herein, all remaining terms and conditions of the Amended and Restated Agreement are hereby ratified and affirmed and shall remain in full force and effect. All defined terms used herein shall have the same meaning ascribed thereto in the Agreement unless another meaning is clearly indicated herein.

[SIGNATURE PAGES FOLLOW]

EXECUTED to be effective as of the ____ day of April, 2017.

IRON & STEEL LOFTS, L.L.C.
a Texas limited liability company

By: Dennis McDaniel, Managing Member

CITY OF SAN ANTONIO,
a Texas Municipal Corporation

BOARD OF DIRECTORS,
Westside TIRZ #30

Sheryl Sculley
CITY MANAGER

Councilwoman Shirley Gonzales
Presiding Officer

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

EXHIBIT A

“Application Form”

City of San Antonio

CENTER CITY DEVELOPMENT AND OPERATIONS DEPARTMENT

Annual Real Property Tax Reimbursement Application

In addition to the supporting documentation outlined in this application, a Letter of Attestation is required to be submitted along with this Annual Real Property Tax Reimbursement (tax rebate) Application. The letter should request the rebate and should attest that all contractual obligations have been met as per the agreement. Information included in this Letter of Attestation should address all applicable categories in this application and must include the following:

- Investment amount
- Number of housing units
- Total cost of public improvements

Surveys, site maps, or other documentation may be needed to verify project details. One site visit by CCDO compliance staff is required per project prior to disbursing the tax rebate payment.

SECTION 1. APPLICANT INFORMATION

Name, Title, Company	Phone Number
Applicant Address	
Payee Name and Address	

SECTION 2. PROJECT INFORMATION (attach supporting documentation as necessary)

Project Name	BCAD Property ID(s) (Attach property detail documents for base year)
Project Address	
Has the project address changed since the execution of the incentive agreement? If yes, what is the new address?	<input type="checkbox"/> Yes <input type="checkbox"/> No New address:
Has the project site been replatted since the execution of the incentive agreement? (If yes, attach base year and rebate year plats)	<input type="checkbox"/> Yes <input type="checkbox"/> No

City of San Antonio

CENTER CITY DEVELOPMENT AND OPERATIONS DEPARTMENT

Annual Real Property Tax Reimbursement Application

Is this the first year submitting an application for tax reimbursement for this project? If CCDO staff has adequate documentation on file from a previous year's rebate, submitting annual support documentation may not be required.		<input type="checkbox"/> Yes <input type="checkbox"/> No
Total # Housing Units Completed	# Affordable Units	# Student Housing Units
*Retail Space Completed (sf)	*Office Space Completed (sf)	# Parking Spaces Completed
Total Project Investment (\$)	Total Public Improvements (\$)	Located in a TIRZ?
		<input type="checkbox"/> Yes <input type="checkbox"/> No

*Please provide professional signed/sealed documents indicating square footage (of a qualified architect or other licensed professional).

SECTION 3. REBATE INFORMATION

Rebate Year (Paid Tax Year)		
Project Base Year	Base Year Acreage	Rebate Year Acreage
Base Year Taxes Paid	Rebate Year Taxes Paid	Difference (Gross Rebate Amount)
Have you filed or do you expect to file a tax protest on this property for the rebate year?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown at this time	
If you've filed, have you received a refund? If yes, what was the amount of City taxes refunded? Please provide support documentation with City refund amount.	<input type="checkbox"/> Yes <input type="checkbox"/> No Amount: \$ _____	

City of San Antonio

CENTER CITY DEVELOPMENT AND OPERATIONS DEPARTMENT

Annual Real Property Tax Reimbursement Application

SECTION 4. SUPPORTING DOCUMENTATION

Support documentation is required to ensure compliance with the terms of the development incentive agreement. Failure to provide the required documentation will result in an incomplete application and will delay the rebate payment process. Additional documentation beyond this list may be required depending on the particular terms of the incentive agreement.

All projects must attach the following documentation (if not already provided):

- Paid tax receipt for the rebate year indicating City amount
- Building permit
- Commencement letter from general contractor
- Proof of project financing
- Itemized verification of project investment
- All Certificates of Occupancy
- BCAD property details for base year and rebate year

The following additional documentation may be required. **Note: Only attach documentation applicable to your agreement.**

Column A Applicable category	Column B Required support documentation attached	Column C Documents attached?
Market-rate rental projects	Leases demonstrating 10% rate preservation	<input type="checkbox"/> Yes <input type="checkbox"/> No
Received mixed-use retail or office space forgivable loan	Itemization verifying cost of tenant finish-out improvements along with signed/sealed documents indicating square footage	<input type="checkbox"/> Yes <input type="checkbox"/> No
	Lease(s) demonstrating at least 80% annual occupancy (must be submitted annually)	<input type="checkbox"/> Yes <input type="checkbox"/> No
Brownfield redevelopment	Environmental reports indicating potential contamination (ex. ESA Ph 1)	<input type="checkbox"/> Yes <input type="checkbox"/> No
Adaptive reuse project	Before and after photos and letter of attestation	<input type="checkbox"/> Yes <input type="checkbox"/> No

City of San Antonio

CENTER CITY DEVELOPMENT AND OPERATIONS DEPARTMENT

Annual Real Property Tax Reimbursement Application

Column A Applicable category	Column B Required support documentation attached	Column C Documents attached?
Student housing	Signed leases and proof of student enrollment and tuition payment	<input type="checkbox"/> Yes <input type="checkbox"/> No
Historic Rehabilitation	Written verification of historic designation from OHP, and before and after photos	<input type="checkbox"/> Yes <input type="checkbox"/> No
Mixed-Income	Leases and income verification	<input type="checkbox"/> Yes <input type="checkbox"/> No
Community Use	Verification by CCDO compliance staff	<input type="checkbox"/> Yes <input type="checkbox"/> No
Within ¼ mile of Robert Thompson Transit Center or Centro Plaza	Verification by CCDO compliance staff	<input type="checkbox"/> Yes <input type="checkbox"/> No
High-rise residential	Verification by CCDO compliance staff	<input type="checkbox"/> Yes <input type="checkbox"/> No
Low Impact Development	Verification letter from Transportation and Capital Improvements (TCI)	<input type="checkbox"/> Yes <input type="checkbox"/> No
Structured Parking	Verification by CCDO compliance staff	<input type="checkbox"/> Yes <input type="checkbox"/> No

Certification			
By submission of this application to the City of San Antonio, I hereby certify that the above and foregoing and all attachments are true and correct.			
Signature		Date	