

DRAFT

RED BERRY ESTATE

MASTER DEVELOPMENT AGREEMENT

OCTOBER ____, 2017

DRAFT

RED BERRY ESTATE MASTER DEVELOPMENT AGREEMENT

This Red Berry Estate Master Development 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, and the San Antonio Housing Trust Public Facility Corporation, a Texas public facility corporation, (hereinafter referred to as “DEVELOPER”) and who together may be referred to as the “Parties.”

RECITALS

WHEREAS, the City owns real property located at 827 Richland Drive, 4007 East IH 10, and 856 Gemblar Road, as more particularly described in Exhibit A, collectively known as the Red Berry Estate (the “Property”); and

WHEREAS, DEVELOPER is a Public Facility Corporation (PFC) that, under the terms of this Agreement, will purchase the Property and cause it’s redevelopment into affordable/mixed-income housing, commercial properties and improvements to be conveyed to the City as further described in this Agreement (the “Project”); and

WHEREAS, the property is within the boundaries of Inner City Tax Increment Reinvestment Zone No. 11 (the “TIRZ”); and

WHEREAS, once completed the redevelopment is anticipated to result in the investment of approximately \$61,800,000.00 in the Property; and

WHEREAS, DEVELOPER is seeking economic incentives from the City in the form of grants and fee waivers; and

WHEREAS, the City and the TIRZ have identified funds to be made available to DEVELOPER in the form of Inner-City Incentive Funds and tax increment from the TIRZ (the “Funds”) to be used to undertake and complete 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 Sections 311.010(b) and Section 311.010 (h) of the Texas Tax Code, the CITY and the TIRZ are authorized to grant 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.2017-10-12-_____, passed and approved on October __, 2017 to sell the Red Berry Estate and to grant certain funds as described herein; and

WHEREAS, the Board of Directors of the TIRZ has authorized the City to use its tax increment which is deposited into the TIRZ tax increment fund to be used as a funding source for the certain grants provided through this Agreement in accordance with Resolution T11-2017-10-10-01R; NOW THEREFORE:

The Parties hereto severally and collectively agree, 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 the TIRZ. The CITY and TIRZ are supporting the Project through this Agreement to provide funds to be used to defer costs associated with the Project and to facilitate certain improvements to the Property.

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 payment of grant funds by CITY to DEVELOPER in the amount of the Maximum Disbursement Amount (as defined below); or (B) termination of this Agreement as otherwise provided herein (the “Term”).

ARTICLE III. PROJECT REQUIREMENTS

A. Purchase of City Property.

1. DEVELOPER shall use the Funds to purchase the 84.59 acre Property and associated water rights from the City in accordance with the terms and conditions of the Purchase/Sale Agreement, Exhibit B. In accordance with Texas Local Government Code §272.001(b)(6), the CITY has authorized the direct sale of the Property to DEVELOPER, under the terms and conditions of the Purchase/Sale Agreement, whose terms and conditions are incorporated herein and made a part of this Agreement. DEVELOPER shall pay from the Funds approximately ONE MILLION FOUR HUNDRED SEVENTY-THREE THOUSAND FIFTY-SIX DOLLARS AND 0 CENTS (\$1,473,056.00) (The “Purchase Price”) for the Property.

2. The total acreage shall be parceled and sold to third-party developers in accordance with the following:

(a) approximately 15 acres will be jointly developed by Developer and NRP Group (“NRP”) as a 330 unit mixed-income housing development project (the “Housing Site”);

(b) approximately 17 acres will be conveyed by Developer to Casey Development, LTD. (“Casey”) to be developed as a commercial office building and will include the Red Berry Mansion, which will be restored by Casey as further described in this Agreement (the “Commercial Site”);

(c) approximately 27 acres will be improved by Developer and conveyed back to the City (the “City Improvements Site”). The improvements shall include the Salado Creek Hike and Bike Trail extension, lake restoration and other public improvements as further defined by City and Developer; and

(d) an additional 26 acres (the “Pecan Orchard”) will be conveyed to Casey for commercial development at the sole discretion of Casey; however, such acreage is not the subject of this Agreement, shall not receive any incentives under this Agreement, and City is not obligated to provide additional incentives under any future agreements.

B. The Mixed-Income Housing Development.

1. Investment. DEVELOPER shall attempt to cause NRP to invest THIRTY FOUR MILLION NINE HUNDRED THOUSAND DOLLARS (\$34,900,000) (the "Minimum Investment") in the Housing Site. The Minimum Investment shall be made in real and personal property improvements and shall include expenditures in: 1) the construction, establishment and operation of a 330 unit mixed-income housing development, 2) a community wellness facility; 3) pool; and 4) direct pedestrian linkages to the Salado Creek Hike and Bike Trail system. For purposes of this Agreement, the Minimum investment shall include expenditures made by DEVELOPER and/or NRP, directly or indirectly, to develop the Housing Site, 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 expenses.

2. Construction. DEVELOPER shall attempt to cause an NRP affiliate to commence construction at the Housing Site twelve (12) months from the closing of the lease from the Developer to NRP and shall use commercially reasonable efforts to complete construction no later than thirty-two (32) months from closing on the Housing Site lease (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 Housing Site and City's receipt of correspondence from the general contractor for the Housing Site certifying that construction has commenced. The completion date shall be determined by the issuance of a Certificate of Occupancy for the Housing Site by City, not to be unreasonably withheld.

a. DEVELOPER shall make available to CITY quarterly progress reports on the Housing Site as generated by NRP on the 15th day of January, April, July and October until completion of the construction. In addition, should CITY request an additional progress report, NRP shall provide such report within fifteen (15) business days.

b. DEVELOPER shall require in its contracts that NRP comply with all applicable Federal, State and local laws and regulations, and to develop and operate the Project in accordance with the terms and conditions of this Agreement including, but not limited to the current Tax Increment Financing Guidelines, the Unified Development Code, Universal Design, Chapter 2258 of the Texas Government Code, the City Code, and the plans and specifications approved by the appropriate department of the City.

c. DEVELOPER agrees to provide the CITY and the TIRZ access to the Project Site for inspections during and upon completion of construction of the Project, and access to documents and records considered necessary to assess the Project.

3. Mixed-Income. Developer shall ensure that the Housing Site is subject to a condition that fifty-percent (50%) of the 330 units are reserved for families making less than eighty-percent (80%) of the Area Median Income for a period of not less than ten (10) years.

C. The Commercial Development.

1. Investment. DEVELOPER shall attempt to cause Casey to invest approximately TWENTY-THREE MILLION DOLLARS AND NO CENTS (\$23,000,000.00) in the Commercial Site. The investment shall be made in real and personal property improvements to the applicable 17 acres of the Commercial Site conveyed to Casey. The investment shall include expenditures in: 1) the construction, establishment and operation of a 169,000 sq. ft. commercial development; and 2) renovation to the Red Berry Mansion. For purposes of this Agreement, the Minimum investment shall

include expenditures made by Casey, directly or indirectly, to develop the Commercial Site, 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 expenses.

2. Construction. DEVELOPER shall attempt to cause Casey to commence construction at the Mansion Site and Corporate Headquarters Site on or before January 30, 2019 and shall use commercially reasonable efforts to complete construction on both projects no later than January 30, 2020 (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 Commercial Site and City’s receipt of correspondence from the general contractor for the Commercial Site certifying that construction has commenced. The completion date shall be determined by the issuance of a Certificate of Occupancy for the Commercial Site by City, not to be unreasonably withheld.

a. DEVELOPER shall make available to CITY progress reports on the Mansion Site and Corporate Headquarters Site as generated by Casey during the Construction Period. In addition, should CITY request a progress report, Casey shall provide such report within fifteen (15) business days.

b. DEVELOPER shall require in its contracts that Casey comply with all applicable Federal, State and local laws and regulations, and shall develop and operate the Project in accordance with the terms and conditions of this Agreement including, but not limited to, the Unified Development Code, Universal Design, Chapter 2258 of the Texas Government Code, the City Code, and the plans and specifications approved by the appropriate department of the City. The Mansion construction site only shall have to comply with the current Tax Increment Financing Guidelines requirements as applicable.

3. Corporate Headquarters. Developer shall attempt to cause Casey to attract RK Group’s corporate headquarters to locate on the Commercial Site. The corporate headquarters shall be for RK Group’s business activities which are that of a catering and food service provider. Developer’s contracts shall cause Casey to require RK Group to employ not less than 300 individuals to be verifiable annually for ten years.

4. Restoration of the Mansion. Developer shall attempt to cause Casey to redevelop the Red Berry Mansion to be reopened as a public event venue managed and marketed by the RK Group.

a. Upon completion of the restoration and opening as an event venue, RK Group shall provide the City with twelve (12) rent free event days annually for community engagements, based on availability at the time of request, excluding food, beverage, and security.

b. In the event Casey sells the Mansion to another party other than the operator of the Mansion within the first 10 years of ownership, Casey shall:

1. Ensure that the Mansion shall continue as a publicly accessible, privately-owned catering and event venue for a period of not less than 10 years from date of transfer to Casey; and
2. Pay a fee to the Inner City TIRZ in the year of sale equal to: ___% of any sale proceeds in excess of Casey’s actual capital investment in the Mansion and Improvements (excluding any amounts Casey receives pursuant to this Agreement

or any agreement with Developer and any amounts paid as an assessment to the property owner's association as described below) plus a 15% preferred return on such investment by Casey.

3. Pay to the TIRZ a fee to the Inner City TIRZ based upon the year of sale and the following schedule:

<u>Year of sale</u>	<u>Fee</u>
0-1	\$700,000
1-2	\$630,000
2-3	\$560,000
3-4	\$490,000
4-5	\$420,000
5-6	\$350,000
6-7	\$280,000
7-8	\$210,000
8-9	\$140,000
9-10	\$70,000

D. City Improvements Site

1. Improvements. Upon conveyance of the City Improvements Site and receipt of CDBG funds from the City, Developer shall cause Casey to: 1) install a one-half mile extension of the Salado Creek Hike and Bike Trail System; 2) a pedestrian bridge over the Salado Creek; 3) public parking for the trail system; and 4) restoration of the lake (the "Improvements"). The Improvements shall be funded from City CDBG funds and the grant described below, and made in coordination and with design approval from the City.

2. Construction. DEVELOPER shall cause Casey to commence construction at the City Improvements Site on or before _____, 2018 and shall use commercially reasonable efforts to complete construction no later than _____, 2019 (the "Construction Period"), subject to Force Majeure as defined in this Agreement.

a. DEVELOPER shall make available to CITY progress reports on the City Improvements Site as generated by Casey during the Construction Period. In addition, should CITY request a progress report, Casey shall provide such report within fifteen (15) business days.

b. DEVELOPER shall cause Casey to comply with all applicable Federal, State and local laws and regulations, and shall develop and operate the Project in accordance with the terms and conditions of this Agreement.

3. Conveyance to City. Upon completion of the improvements, the City Improvements Site shall be conveyed to the City at no cost to the City.

E. Low Impact Development. Developer shall cause all third-party developers to incorporate Low Impact Development (LID) standards throughout the Project.

F. Property Owner's Association. Developer shall create a property owner's association for the maintenance of the Improvements. The Property Owner's Association will assess the property owners .12 per \$100 of valuation as determined by the Bexar County Appraisal District and if no valuation is noted, by the lesser of the cost of the project or the fair market value of the project as reasonably set by the Board of the Property Owner's Association. This assessment shall be used only to maintain the lake, hike and bike trail, pump station and common areas. The mixed income housing development will contribute an up-front fee of \$200,000 towards lake, trails and common area maintenance in lieu of the first seven (7) years of assessments to provide a fund to pay for maintenance prior to the buildup of value in the Project. The City shall also continue an annual payment of \$59,864 for a period of four (4) years to contribute to the Property Owner's Association maintenance of the Salado Creek Hike and Bike Trail System Extension and Lake Improvements. If the mixed income housing development does not close within 1 year of the City's conveyance to DEVELOPER and thus NRP is unable to contribute the \$200,000 in upfront fee to the Property Owner's Association, the City's contribution period shall be extended annually for up to an additional three (3) years.

ARTICLE IV. ECONOMIC DEVELOPMENT PROGRAM GRANT

A. Economic Development Program Grant. For consideration of the activities as described in Article III, the CITY, through its tax increment and the TIRZ, are providing DEVELOPER with an Economic Development Program Grant in a cumulative amount of approximately SEVEN MILLION SIX HUNDRED EIGHTY-ONE THOUSAND EIGHT HUNDRED THIRTY-NINE DOLLARS AND 0 CENTS (\$7,681,839.00) (the "Maximum Disbursement Amount"), which shall be used as follows:

1. Land Purchase Grant. CITY shall provide DEVELOPER a grant in the amount of ONE MILLION FOUR HUNDRED SEVENTY-THREE THOUSAND FIFTY-SIX DOLLARS AND 0 CENTS (\$1,473,056.00) ("Land Purchase Grant") to be reinvested in the Project. The Land Purchase Grant shall be made available to Developer upon Developer's closing on the entirety of the Red Berry Estate or in the amounts provided to City upon the sale of parcels of the Red Berry Estate.
2. TIRZ Fund. City shall provide DEVELOPER a grant in the amount of FOUR MILLION FIVE HUNDRED NINETY-ONE THOUSAND THREE HUNDRED THIRTY-NINE DOLLARS AND 0 CENTS (\$4,591,339.00). The source of funding shall be the Inner City TIRZ tax increment fund. The funds shall be disbursed as follows:
 - (a) \$1,534,470.00 shall be disbursed incrementally for eligible costs associated with the development of the multi-family Housing Site
 - (b) \$700,000.00 shall be disbursed incrementally for the eligible costs associated with the renovation of the Mansion
 - (c) \$ 2,356,869.00 shall be disbursed incrementally for the construction of the public infrastructure to include utilities.
 - (d) Priority of Payment. DEVELOPER acknowledges and agrees that the TIF Fund will reimburse DEVELOPER for eligible Project Costs in order of priority of payment of the TIRZ.
3. Annual Incremental Property Tax Reimbursement. Subject to the terms and conditions of this Agreement and the Payment Conditions (defined below), for each tax year commencing with the Initial Reimbursement Tax Year and then annually for a term of ten (10) consecutive tax years throughout the remainder of the Term of this Agreement, CITY and TIRZ shall provide DEVELOPER no later than forty-five (45) business days following submission of a tax invoice indicating full payment of all taxes owed on the Commercial Site, an annual grant for the Term of this Agreement, whose cumulative

amount shall not exceed ONE MILLION SEVENTY-SIX THOUSAND EIGHT HUNDRED SIXTY-FIVE DOLLARS AND 0 CENTS (\$1,076,865.00). The amount of the annual grant (the “Annual Incremental Property Tax Reimbursement”) shall be equal to:

- (a) The amount of the annual grant (the “Annual Incremental Property Tax Reimbursement”) shall be equal to the actual amount of real property taxes paid to CITY and TIRZ with respect to the Commercial Site for the immediately preceding tax year, *less* the amount of real property taxes on the Commercial Site for the land valuation of the Commercial Site for the tax year ending December 31, 2016 (the “Base Year”), as shown on the Bexar Appraisal District Records; and
 - (i) The “Initial Reimbursement Tax Year” shall be defined as the first tax year in which actual Commercial Site project completion occurs, for which reimbursement under this section can be sought;
 - (ii) The “Base Year” shall be defined as the immediately preceding tax year from the date of execution of this Agreement.
- (b) Payment of the Annual Incremental Property Tax Reimbursement to DEVELOPER shall occur in accordance with the following conditions (collectively, the “Payment Conditions”):
 - (iii) For each tax year during the Term of this Agreement, CITY and TIRZ shall pay the Annual Incremental Property Tax Reimbursement to DEVELOPER provided that the CITY or other participating taxing entities have deposited funds into the TIF for that particular tax year, pursuant to Section 311.013 of the Texas Tax Code.
 - (iv) For any particular tax year during the Term of this Agreement, if no tax increment is realized within the TIRZ, then the TIRZ shall defer payment of the Annual Incremental Property Tax Reimbursement that is due to DEVELOPER under this Section, during that tax year.
 - (v) For any particular tax year during the Term of this Agreement, if insufficient tax increment is realized within the TIRZ to permit the full payment of the Annual Incremental Property Tax Reimbursement due to DEVELOPER under this Section, the TIRZ shall pay as much of the Annual Incremental Property Tax Reimbursement to DEVELOPER, as possible, and the TIRZ shall defer payment of any unpaid balance of the Annual Incremental Property Tax Reimbursement due to DEVELOPER under this Section during that tax year.
 - (vi) It is expressly agreed that all deferred Annual Incremental Property Tax Reimbursements (the “Deferred Amounts Due”) shall accrue without interest and be payable at the earliest reasonable opportunity to DEVELOPER by the TIRZ upon the availability of tax increment in the Tax Increment Fund during the Term of this Agreement.
 - (vii) DEVELOPER acknowledges that unless the TIRZ is extended, payments will cease upon termination of the TIRZ and reconciliation of all accounts. Once the TIRZ terminates, City may be liable for obligations regarding the Annual Property Tax Increment Reimbursement. However, should City undertake payment of the Annual Property Tax Reimbursement, then such payment shall

be reduced annually to sixty-two point six percent (62.6%) of the annual incremental property tax paid by DEVELOPER,

- (viii) The DEVELOPER understands and agrees that any expenditure made by the DEVELOPER in anticipation of reimbursement from tax increments shall not be, nor shall be construed to be, financial obligations of the CITY or the TIRZ. The DEVELOPER shall bear all risks associated with reimbursement, including, but not limited to: incorrect estimates of tax increment, changes in tax rates or tax collection, changes in state law or interpretations thereof, changes in market or economic conditions impacting the Project, changes in interest rates or capital markets, changes in building and development code requirements, changes in CITY policy, and/or unanticipated effects covered under legal doctrine of force majeure.
- (ix) Any and all amounts payable by the TIRZ under this Agreement are payable solely from the TIRZ Tax Increment Fund, and no claim for payment of any amount outside of this contribution shall be made, claimed or permitted against any other funds, properties, assets or the general credit of the TIRZ and/or CITY.
- (x) **Priority of Payment.** DEVELOPER acknowledges and agrees that the TIF Fund will reimburse DEVELOPER in the order of priority of payment of the TIRZ.
- (xi) **Obligation to Pay Taxes.** It is understood that DEVELOPER shall continue to pay all taxes owed on the Commercial 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 on the Commercial Site have been paid in full for the tax year for which payment of the Annual Incremental Property Tax Reimbursement is sought, subject to the right to protest taxes as permitted by law. If, during the Term of this Agreement, the ad valorem taxes due on the Commercial Site 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.
- (xii) **Property Tax Reconciliation.** In no case shall grant disbursements made to DEVELOPER under this Agreement exceed the Maximum Disbursement Amount. Should such disbursements exceed the Maximum Disbursement Amount, no further disbursements shall be due to DEVELOPER and any excess funds disbursed shall be due and payable by DEVELOPER to CITY within sixty (60) days following written notice from CITY to DEVELOPER.

(c) **Assignability of Tax Reimbursement.** Upon the approval of the City, the Annual Incremental Property Tax Reimbursement may be assigned by Developer to the RK Group, as anchor tenant of the Commercial Site, so long as RK Group agrees in writing to the job requirements of relocating 300 to 400 jobs and creating an additional 100 jobs once located at the Commercial Site. Such agreement shall be in a form acceptable to City.

4. **Inner City Incentive Grant.** The CITY is providing DEVELOPER with an Inner City

Incentive Fund Grant in the amount of FIVE HUNDRED FORTY THOUSAND FIVE HUNDRED SEVENTY NINE DOLLARS AND 0 CENTS (\$540,579.00) (the "Incentive Loan Funds"). The purpose of the Incentive Loan Funds is to provide an economic incentive to the Mixed Income Housing Development. The funds made available to DEVELOPER through this Agreement are made solely from lawfully available funds that have been appropriated by CITY.

(a) Disbursement. The Incentive Loan Funds shall be disbursed to DEVELOPER in one (1) lump sum upon DEVELOPER having entered into a contractual agreement with the Mixed Income Housing Development to locate and operate at the Project Site for a term of at least ten (10) years.

(b) Finish-Out. The Incentive Loan Funds shall be used to construct or finance the Mixed Income Housing Development.

5. Fee Waivers. The CITY is providing DEVELOPER with Fee Waivers in the amount of ONE MILLION THREE HUNDRED SEVENTY-FOUR THOUSAND THREE HUNDRED EIGHTY-NINE DOLLARS AND NO CENTS (\$1,374,389.00) to include City and SAWS fee waivers as outlined in the Inner CITY Reinvestment Infill Policy. The Fee Waivers are administrative in nature but are reflected in the attached Fee Waiver Letter, Exhibit C.

6. CDBG Funding. The City and Developer acknowledge that the Improvements have been approved for CDBG funding, which are provided for in a separate agreement and previously approved by City Council.

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 other entity for any costs incurred by DEVELOPER in connection with this Agreement.

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 [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"). 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.

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. A copy will be provided to the TIRZ Board.

D. CITY shall not be liable to DEVELOPER or to DEVELOPER's creditors for costs incurred during any term of suspension of this Agreement and no TIRZ funds shall be provided to DEVELOPER until such suspension is lifted by City including the Annual Incremental Property Tax Reimbursement.

ARTICLE IX. TERMINATION

A. CITY 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 fails 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 may, upon issuance to DEVELOPER of written notice (the "Notice of Termination"), terminate this Agreement and withhold further payments to GRANTEE. 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 real property that is part of the Project and any disbursed TIRZ Funds and/or funds made under the Annual Incremental Property Tax Reimbursement, and any and all disbursed Incentive Loan Funds which are still held by Developer. For land and funds sub-granted to NRP or Casey, DEVELOPER will cooperate with CITY to enable it to recapture such funds and shall assign to CITY its rights under its agreement with NRP and Casey to enable CITY to recapture such funds. CITY and/or TIRZ shall be entitled to the repayment of the recaptured funds within sixty (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 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. The CITY recognizes that DEVELOPER will grant the funds provided to it to Casey and NRP to accomplish the purposes of this Agreement. The CITY agrees that its exclusive rights upon any default of this Agreement will be to suspend payment or terminate this Agreement as provided above. DEVELOPER agrees that the CITY will be named as a third party beneficiary to the DEVELOPER'S Agreements with Casey and NRP to the extent that they are funded in part with the proceeds of the Economic Development Program Grant described above. The CITY agrees that it will not seek any damages or funds from the DEVELOPER in the event of a default under this Agreement except as provided 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, to:

City of San Antonio
ATTN: TIRZ Board #11
Dept. of Housing & Neighborhood Svcs.
1400 S. Flores St.
San Antonio, TX 78204

If intended for DEVELOPER, to:

San Antonio Housing Trust Public
Finance Corporation
Attn: John Kenny
2515 Blanco Road
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 Inner City Tax Increment Reinvestment Zone #11 to occur on a date earlier than provided in the ordinance that initially established the TIRZ, the DEVELOPER may petition the CITY to amend this Agreement, in its sole discretion, to provide for the payment of the Annual Property Tax Increment Reimbursement in accordance with the material terms and conditions of this Agreement.

B. Site Inspection. DEVELOPER shall allow CITY and TIRZ representatives reasonable access to the Property for inspections during and upon completion of construction of the Project, and access to documents and records considered necessary to assess the Project and DEVELOPER's compliance with the terms of this Agreement.

C. 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.

ARTICLE XII. CONFLICT OF INTEREST

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.

ARTICLE XIII. NONDISCRIMINATION AND SECTARIAN ACTIVITY

A. DEVELOPER shall ensure that no person shall, on the ground of race, color, national origin, religion, sex, age or handicap, be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied access to any program or activity funded in whole or in part with funds made available under this Agreement.

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 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 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 set forth.

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.

ARTICLE XV. LITIGATION AND CLAIMS

A. DEVELOPER shall give CITY and TIRZ 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 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 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 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.

B. It is understood and agreed by the Parties hereto 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, 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 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 XX. NON-ASSIGNMENT

Notwithstanding the assignability of Article IV(3)(c), 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 and TIRZ no less than thirty (30) days prior written notice of the assignment or other transfer. Any and all future assignees must be bound by all terms and/or provisions and representations of this Agreement as a condition of assignment. Any attempt to assign the Agreement without the notification and subsequent consent of CITY and TIRZ 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.

ARTICLE XXI. ORAL AND WRITTEN AGREEMENTS

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.

ARTICLE XXII. 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 XXIII. INCORPORATION OF EXHIBITS

Each of the Attachments listed below is an essential part of the Agreement, which governs the rights and duties of the parties.

Exhibit A:

Exhibit B:

Exhibit C:

Signatures appear on next page.

WITNESS OUR HANDS, EFFECTIVE as of _____, 2017 (the “Effective Date”):

Accepted and executed in two duplicate originals on behalf of the City of San Antonio pursuant to Ordinance Number 2017-10-12-_____, dated October 12, 2017, and DEVELOPER pursuant to the authority of its _____.

CITY:

SAN ANTONIO HOUSING TRUST
PUBLIC FACILITY
CORPORATION:

Sheryl L. Sculley
City Manager

John Kenny
Executive Director

ATTEST:

Leticia Vacek
City Clerk

APPROVED AS TO FORM:

City Attorney

Executed by the Inner City TIRZ Board as acknowledging the Tax Increment Fund as a funding source for this Agreement:

Chair