

**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***.”

WITNESSETH:

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 4, 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 City Ordinance No. 2011-05-19-0417 (the “*Amended and Restated Agreement*”), the City processed reimbursement of Westside TIRZ funds to GRANTEE in the amount of \$36,969.37 for tax years 2012 and 2013.

WHEREAS, GRANTEE has completed the Project 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.

2.

The second recital of the 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 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 (B.)(ii) of the 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.** Reimbursement of TIF Funds are subject to availability and priority of payment, and are not intended to reimburse all costs incurred in connection with the Project or expenses incurred by GRANTEE for performance of the GRANTEE obligations under the Agreement, as amended, and this Agreement. 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, as amended, and this Agreement, from the Westside TIRZ a total maximum reimbursement 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 on the Westside Tax Increment Reinvestment Zone Number 30, City of San Antonio, Texas to 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.
- (i) GRANTEE shall annually submit a completed application and, for each tax year for which payment of the annual property tax increment reimbursement is sought:
 - 1) evidence [from the Bexar County Tax Assessor](#) indicating the amount of taxes paid to City for the Property, and 2) evidence that all taxes owed by GRANTEE on the portion of the Property owned by GRANTEE have been paid in full.
 - (ii) GRANTEE shall submit no more than one request for reimbursement per year for the project site and GRANTEE shall receive no more than one payment of the reimbursement per year. Failure to submit the application and all other necessary information in accordance with this Section may delay the reimbursement payment.
 - (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 reimbursement payment to GRANTEE, only those taxes paid by condominium owners and by GRANTEE at the time of the request will be considered for reimbursement. 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.
- (e) **ORDER OR PRIORITY OF PAYMENT.** The Parties agree that TIF Funds will be used to pay eligible expenditures in the following order or priority of payment:
- (i) to reimburse eligible startup Administrative Costs;
 - (ii) to reimburse all other ongoing Administrative Costs;
 - (iii) to reimburse the City for costs of the repair, replacement, and maintenance of public infrastructure and associated costs as described in any Development Agreements (if any); and
 - (iv) to reimburse GRANTEE for public improvements, as provided in this Agreement and in the Project and Finance Plans. These costs will be financed/reimbursed to the extent that funds in the Tax Increment Fund are available for these purposes.

- (f) **PROCESSING OF PAYMENT REQUESTS.** TIF Funds shall be made available to GRANTEE after the deposit of tax increment payment to the TIF Fund, subject to availability, priority of payment and requirements herein.

Reimbursements for each tax year commencing with the 201~~24~~ tax year and then annually throughout the remainder of the term shall be made to GRANTEE ~~after the City's receipt of satisfactory evidence provided by GRANTEE from the Bexar County Tax Assessor indicating taxes paid on the Project,~~ 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 difference between (a) and (b))~~result being referred to herein as the "Annual Property Tax Increment Reimbursement".

- (g) **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.

Section 3.B. (iv) of the 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. 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 properly 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.”

5.

Except as specifically provided to the contrary herein, all remaining terms and conditions of the 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.

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

Signatures on the next page

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