

ORDINANCE 2020-06-04-0364

**APPROVING A MASTER ECONOMIC DEVELOPMENT AGREEMENT
AND SALES CONTRACT WITH WESTON URBAN, LLC FOR THE SALE
OF THE CONTINENTAL HOTEL PROPERTY LOCATED AT 322 W.
COMMERCE IN COUNCIL DISTRICT 1.**

* * * * *

WHEREAS, the Continental Hotel was constructed in 1896 as a hotel and has since undergone numerous interior and storefront alterations; in 1984, extensive renovations transformed the building's interior into offices and lab space for the City's Metropolitan Health District and the building has remained vacant since the Health District relocated in 2016; and

WHEREAS, Planning Commission recommended that the Continental Hotel site be declared surplus on October 10, 2018; and

WHEREAS, on September 11, 2019, City of San Antonio's ("City") Center City Development and Operations Department ("CCDO") sought proposals for the sale of the Continental Hotel property located at 322 W. Commerce in Council District 1; and

WHEREAS, the Request for Proposal ("RFP") was advertised in the San Antonio Express News and the TVSA channel, and an email notification was released to a list of potential respondents; additionally, the RFP was posted to the City's bidding and contracting opportunities website; and

WHEREAS, the evaluation committee, by a consensus vote, recommended Weston Urban, LLC for award; the committee based its decision on several weighted factors, including purchase price, development experience, financial capacity and capability, project plan and timeline, economic value, the local preference program and the veteran-owned small business preference program; and

WHEREAS, Weston Urban, LLC owns the parcel immediately south of the subject property, which contains the historic Arana Building; acquisition of the Continental Hotel property would complete their ownership of the block bounded by Commerce, Laredo, Dolorosa, and San Pedro Creek, and would facilitate a comprehensive approach to mixed-use redevelopment; and

WHEREAS, Weston Urban proposes redevelopment of the Property as part of a mixed-use community that provides new residential housing and commercial space, blending the historic buildings on the site with added density in the middle of the block; and

WHEREAS, approximately 274 new residential units are proposed, with at least half reserved for households at 80% of the Area Median Income and is anticipated to be achieved through a partnership with a Public Facilities Corporation; and

WHEREAS, parking will be provided in a garage wrapped on three sides by the residential units and will include approximately 432 spaces, including 68 public spaces made available for City's daytime use at a market rate; and

WHEREAS, the project seeks incentives aligning with the adopted 2018 CCHIP policy, including City fee waivers valued at \$161,000, SAWS fee waivers not to exceed \$1 million, and a 15-year property tax rebate valued at approximately \$277,343, and would also qualify for an Infrastructure Grant valued at \$500,000, the terms being that the grant would require that the residential units remain affordable for 15 years or be paid back by the developer to the City; and

WHEREAS, the funding sources for the Infrastructure Grant and City fee waivers are the Houston Street TIRZ and Westside TIRZ, contingent upon approval of each respective TIRZ Board; **NOW THEREFORE**,

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

SECTION 1. The City Manager and designee, severally, are authorized and directed to enter into an agreement, substantially in the form as shown in **Attachment I**, with Weston Urban, LLC to sell the City-owned property located at 322 W. Commerce, commonly known as the Continental Hotel, to Weston Urban, LLC for redevelopment. The City Manager or designee, severally, are authorized to take all additional actions reasonably necessary or convenient to effectuate the transaction, including executing and delivering all instruments and agreements conducive to effectuating the transaction.

SECTION 2: Funds generated by this ordinance will be deposited into Fund 29501000, Internal Order 219000000176, and General Ledger Account 4903100.


SECTION 3: The disposition of surplus property must be coordinated through the City's Finance Department to assure the removal of these assets out of the City's financial records and to record the proper accounting transactions.

SECTION 4. 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 5. This Ordinance becomes effective 10 days after passage, unless it receives the eight votes requisite to immediate effectiveness under San Antonio Municipal Code § 1-15, in which case it becomes effective immediately.

VS
6/4/2020
Item No. 23

PASSED AND APPROVED this 4th day of June, 2020.

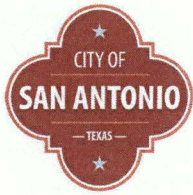

M A Y O R
Ron Nirenberg

ATTEST:


Tina Flores, Acting City Clerk

APPROVED AS TO FORM:


Andrew Segovia, City Attorney



City of San Antonio

City Council

June 04, 2020

Item: 23

File Number: 19-9168

Enactment Number:

2020-06-04-0364

Ordinance approving the sale of City-owned property at 322 W. Commerce, in Council District 1, known as the Continental Hotel property, through an Economic Incentive Agreement with Weston Urban, LLC for \$4,700,000, and depositing the sale proceeds into the City Tower fund. [Lori Houston, Assistant City Manager; John Jacks, Director, Center City Development & Operations]

Councilmember John Courage made a motion to approve. Councilmember Rebecca Viagran seconded the motion. The motion passed by the following vote:

Aye: 11 Nirenberg, Treviño, Andrews-Sullivan, Viagran, Rocha Garcia,
Gonzales, Cabello Havrda, Sandoval, Pelaez, Courage and Perry

VS
6/4/2020
Item No. 23

ATTACHMENT I

CONTINENTAL HOTEL PROJECT

MASTER ECONOMIC INCENTIVES AGREEMENT

JUNE ____, 2020

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CONTINENTAL HOTEL PROJECT MASTER ECONOMIC INCENTIVES AGREEMENT

This Continental Hotel Project Master Economic Incentives 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 designee and Weston Urban, LLC (hereinafter referred to as "**DEVELOPER**") and whom together may be referred to as the "**Parties**."

RECITALS

WHEREAS, CITY is the owner of an approximately 1.110 acre tract of land situated in the corporate limits of the city of San Antonio, Bexar County, Texas and being all that portion of New City Block 254 described in two parcels comprising a 0.450 acre tract and 0.674 acre tract as conveyed unto the City of San Antonio by general warranty deed executed December 26, 1986 and recorded in Volume 3898, Page 1325 Bexar County Real Property Records, SAVE AND EXCEPT that certain 0.0009 acre tract conveyed out of said 0.674 acre tract to the San Antonio River Authority by deed recorded in Volume 18296, Page 465, said Real Property Records as more particularly described on Exhibit "A" attached hereto (the "**Property**"); and

WHEREAS, CITY has agreed to the sale of the Property to DEVELOPER;

WHEREAS, DEVELOPER is engaged in an economic development project that will be located within the City limits of San Antonio and will consist of the redevelopment of the Property to include: 1) mixed residential housing to meet the demand for downtown living; and 2) parking spaces for the development of the Property including spaces made available for public use (the "**Project**"); and

WHEREAS, once completed, the Project is anticipated to result in the investment of at least \$73,000,000 in real and personal property improvements; and

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

WHEREAS, the CITY has identified funds to be made available to DEVELOPER in the form of a grant and waivers for use in undertaking and completing the Project in accordance with the terms and conditions of this Agreement; and

WHEREAS, DEVELOPER intends to partner with a Public Facilities Corporation ("**PFC**") to provide affordable housing in exchange for tax exemption; and

WHEREAS, DEVELOPER's Project is anticipated to include approximately 274 apartments, including 137 units affordable to households earning at or below 80% of the Area Median Income; and

WHEREAS, the CITY Council has authorized the City Manager or her designee to enter into this Agreement in accordance with City Ordinance No.2020-__-_____, passed and approved on _____, 2020 to sell the Property and to grant and certain funds and fee waivers as described herein;

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 1. AGREEMENT PURPOSE

DEVELOPER shall undertake the Project which is anticipated provide mixed residential housing to meet the demand for downtown living in the City of San Antonio. The CITY is supporting the Project through this Agreement to provide funds to be used to defer costs associated with the Project and to facilitate the

sale of the Property in conjunction with the establishment and operation of the Project.

ARTICLE 2 AGREEMENT PERIOD

This Agreement shall commence upon the Effective Date listed on the signature page and shall terminate upon the earlier of: (A) December 31st of the year following the final year eligible for tax reimbursement; (B) the full-payment of Incentives by CITY and both Tax Increment Reinvestment Zones (singularly, "**TIRZ**") to DEVELOPER, as limited by this Agreement and subject to funding availability; or (C) termination of this Agreement as otherwise provided herein (the "**Term**"). In no case shall the Term of this Agreement exceed 15 years following the first year DEVELOPER receives a tax reimbursement under the terms of this Agreement.

ARTICLE 3 PROJECT REQUIREMENTS

A. Purchase of CITY Property.

1. DEVELOPER is seeking to purchase the Property.
2. In accordance with Texas Local Government Code §272.001, the CITY has authorized the sale of the Property to DEVELOPER pursuant to a separate Purchase and Sale Agreement attached and incorporated at Exhibit "D".

B. The Project.

1. Minimum Investment. DEVELOPER shall invest at least \$40,300,000 (the "**Minimum Investment**") in the Project. The Minimum Investment shall be made in real and personal property improvements to the Property and certain adjacent property, together depicted on the attached Exhibit "B" as the "Project Site" (collectively the "**Project Site**"). The Project shall include a minimum of 150 residential housing units, of which at least half of the units shall be available to households earning at or below 80% of the Area Median Income in accordance with the requirements of the PFC (each such unit complying with the PFC requirements an "**Affordable Unit**" for purposes of this Agreement). For purposes of this Agreement, the "**Minimum Investment**" shall include all expenditures made by DEVELOPER, directly or indirectly, to develop the Project, including without limitation: architectural, engineering and surveying expenses; financing costs and fees; construction period interest; property acquisition costs; closing and settlement expenses; demolition, construction, site preparation, remediation, paving, landscaping and utilities expenses; and all other similar expenses related to the acquisition, development and construction of the Project.
2. Construction. DEVELOPER shall use commercially reasonable efforts to commence construction at the Project Site on or before November 30, 2021 and shall use commercially reasonable efforts to complete construction no later than November 30, 2023 (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 an affidavit 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, not to be unreasonably withheld. Extensions may be administratively approved by the director of Center City Development & Operations under this Agreement, but in

no circumstances shall construction start any later than March 31, 2022 so long as the San Antonio River Authority has ceased all use of the Property and removed all equipment from the Property no later than December 15, 2020.

- 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 fifteen (15) business days.
 - b. DEVELOPER shall 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. City Parking. So long as Developer is able to relocate or remove the buildings and portions thereof from the Project Site as indicated in its response to the City RFP for the Property (collectively, the "***Necessary Building Removals and Relocations***"), the Project shall contain a parking garage (the "***Garage***") with at least 68 shared and unreserved parking spaces made available for CITY use during Daytime Hours (as defined below) at a market rate rental. If all of the Necessary Building Removals and Relocations are not approved, this requirement will not apply. Assuming all of the Necessary Building Removals and Relocations are approved, Developer and CITY will negotiate in good faith the terms of a lease or license agreement providing for the CITY's use of the specified parking spaces and payment of the market rate rental. CITY may consider additional incentives in the future to augment public parking. "***Daytime Hours***" for the purposes of this Agreement means between the hours of 8:00 AM and 5:30 PM, Monday through Friday, CITY holidays excepted.

ARTICLE 4 INFRASTRUCTURE GRANT

CITY is providing DEVELOPER with an infrastructure grant (the "***Infrastructure Grant***") equal to the lesser of (1) \$10,000 multiplied by the number of Affordable Units in the Project or (2) FIVE HUNDRED THOUSAND AND 00/100 DOLLARS (\$500,000.00). The Infrastructure Grant shall be made paid by CITY to DEVELOPER upon DEVELOPER submitting documents evidencing, to CITY's satisfaction, that DEVELOPER has obtained a certificate of occupancy for some portion of one of the new buildings being constructed as part of the Project. Funding under this article is subject to Westside TIRZ #30 and Houston Street TIRZ #9 board approval.

ARTICLE 5 FEE WAIVERS

In addition to the Infrastructure Grant, CITY is providing DEVELOPER with a City fee waiver reimbursement grant in an amount not to exceed ONE HUNDRED AND SIXTY ONE THOUSAND DOLLARS AND 00/100 (\$161,000.00) and SAWS impact fee waivers in an amount not to exceed ONE MILLION DOLLARS AND 00/100 (\$1,000,000.00). The precise amount of the fee waivers with respect to the SAWS impact fees will be the lesser of (i) the actual SAWS impact fees assessed against the Project based upon the Project's size and scope and (ii) \$1,000,000. The SAWS Fee Waivers are administrative in nature and are effective as of the date they are issued as reflected in the attached Fee Waiver Transmittal, attached hereto and incorporated as Exhibit "C". The City fee waivers are subject to funding by Houston Street TIRZ #9 board.

ARTICLE 6 PROPERTY TAX REBATE

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 continuing annually for a total of 15 consecutive tax years throughout the remainder of the Term of this Agreement, CITY and Westside TIRZ #30, under Center City Housing Incentive Policy, shall provide DEVELOPER, following submission of a tax invoice by DEVELOPER indicating full payment of all taxes owed by DEVELOPER on the Project, an annual grant for the Term of this Agreement.

- (a) The amount of the annual grant (the “**Annual Incremental Property Tax Reimbursement**”) shall be equal to 90% of the actual amount of real property taxes paid to CITY with respect to the Project Site for the immediately preceding Tax Year, *less* the amount of real property taxes paid to CITY with respect to the Project Site for the tax year ending 2019 (the “**Base Year**”).
- (b) The “*Initial Reimbursement Tax Year*” shall be defined as the first tax year immediately following the tax year in which actual Project completion occurs, for which reimbursement under this section can be sought.
- (c) Payment of the Annual Incremental Property Tax Reimbursement to DEVELOPER shall occur in accordance with the following conditions (collectively, the “**Payment Conditions**”):
 - (i) For each tax year during the Term of this Agreement, CITY and Westside TIRZ #30 shall pay the Annual Incremental Property Tax Reimbursement to DEVELOPER provided the CITY has deposited funds into the TIF for that particular tax year, pursuant to Section 311.013 of the Texas Tax Code. DEVELOPER further understands that the level of participation in the Westside TIRZ #30 by participating governmental entities may be less than 100%.
 - (ii) For any particular tax year during the Term of this Agreement, if no tax increment is realized within the Westside TIRZ #30, then the Westside TIRZ #30 shall defer payment of the Annual Incremental Property Tax Reimbursement that is due to DEVELOPER under this Article, during that tax year.
 - (iii) For any particular tax year during the Term of this Agreement, if insufficient tax increment is realized within the Westside TIRZ #30 to permit the full payment of the Annual Incremental Property Tax Reimbursement due to DEVELOPER under this Article, the Westside TIRZ #30 shall pay as much of the Annual Incremental Property Tax Reimbursement to DEVELOPER, as possible, and the Westside TIRZ #30 shall defer payment of any unpaid balance of the Annual Incremental Property Tax Reimbursement due to DEVELOPER under this Article during that tax year.
 - (iv) It is expressly agreed that all deferred Annual Incremental Property Tax Reimbursements (the “**Deferred Amounts Due**”) shall accrue without interest and shall be payable at the earliest reasonable opportunity to DEVELOPER by the Westside TIRZ #30 upon the availability of tax increment in the Tax Increment

Fund during the Term of this Agreement.

- (v) DEVELOPER acknowledges that unless the Westside TIRZ #30 is extended, payments will cease upon termination of the Westside TIRZ #30 and reconciliation of all accounts. Should the Westside TIRZ #30 terminate, CITY may consider at the request of Developer, to: 1) extend the term of the Westside TIRZ #30; or 2) undertake payment of the Annual Incremental Property Tax Reimbursement. The decision to either extend the Westside TIRZ #30 term or undertake payments of the Annual Incremental Property Tax Reimbursement is at the sole discretion of the CITY. However, should the CITY undertake the Annual Incremental 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. City shall determine the number of years it shall make the Annual Incremental Property Tax Reimbursement payment, but in no case shall that term exceed the Term of this Agreement.
 - (vi) 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 Westside TIRZ #30. 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 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, and/or unanticipated effects covered under legal doctrine of force majeure.
 - (vii) Any and all amounts payable by the Westside TIRZ #30 under this Agreement are payable solely from the Westside TIRZ #30 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 Westside TIRZ #30 and/or the CITY.
 - (viii) Any fees associated with the administration of the Westside TIRZ #30 shall take priority of payment over DEVELOPER's reimbursement.
- (d) Obligation to Pay Taxes. It is understood that DEVELOPER shall continue to pay all taxes owed on the Project Site as required by law. Taxes owed shall be determined by the Bexar County Appraisal District. Prior to the CITY disbursing Westside TIRZ #30 funds under this Agreement, DEVELOPER must provide to CITY evidence indicating that all taxes owed by DEVELOPER on the Project Site have been paid in full for the tax year for which payment of the Annual Incremental Property Tax Reimbursement is sought, 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 Project 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 Westside TIRZ #30's remedies under this Agreement shall apply.

- (e) Transfer of Ownership. If DEVELOPER makes each housing unit available for sale to individual buyers, all references to DEVELOPER's responsibility for the tax payments will be transferred to the individual unit owners as each unit is sold. The payment of incentives to DEVELOPER by CITY under the Annual Incremental Property Tax Reimbursement is limited by the actual amount of ad valorem taxes paid to CITY by the individual unit owners and contingent upon DEVELOPER providing evidence of ad valorem taxes paid.
- (f) Payment to City for Affordable Housing. DEVELOPER agrees to pay to City an annual amount equivalent to twenty-five percent (25%) of its Annual Incremental Property Tax Reimbursement. Such payment shall be made no later than thirty (30) days following DEVELOPER's receipt of the CITY's reimbursement. Such funds shall be utilized by CITY to encourage the development of affordable housing in the city.

ARTICLE 7 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 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 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 8 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, in accordance with Articles 9 and 10 herein.

ARTICLE 9 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 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. CITY shall not be liable to DEVELOPER or to DEVELOPER's creditors for costs incurred during any term of suspension of this Agreement.

ARTICLE 10 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 9 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 for cause and withhold further payments to DEVELOPER. 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 terminate this Agreement, then CITY shall have the right to recapture the Infrastructure Grant. CITY 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. Notwithstanding any exercise by CITY of its right of suspension under Article 9 of this Agreement, or of early termination pursuant to this Article 10, DEVELOPER shall not be relieved of its obligation to repay any and all disbursed 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.

ARTICLE 11 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 & Operations Dept.
P.O. Box 839966
San Antonio, TX 78283-3966

If intended for DEVELOPER, to:

Attn: _____
San Antonio, TX 782__

ARTICLE 12 SPECIAL CONDITIONS AND TERMS

A. 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 13 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 14 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 15 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 9 and 10 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 16 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 17 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 herein contained, CITY agrees to pay to the DEVELOPER reasonable fees of such attorneys and such other expenses so incurred by the DEVELOPER.

ARTICLE 18 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. Any amendments to this Agreement that constitute a material change to the terms of this Agreement or increase the amount of the financial incentives to be provided to DEVELOPER by CITY must be approved by CITY ordinance; provided, however, that extensions to deadlines and other nonmaterial changes may be approved by the City Manager or his designee.

B. 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 19 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, the CITY is not 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 20 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 21 RIGHTS UPON DEFAULT

It is expressly understood and agreed by the Parties hereto 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 22 NON-ASSIGNMENT

The 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's 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 shall release CITY 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 9 of this Agreement.

ARTICLE 23 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 24 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 25 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: Property Description

Exhibit B: Project Site

Exhibit C: Fee Waiver Letter

Exhibit D: Real Estate Sales Contract

WITNESS OUR HANDS, EFFECTIVE as of _____, 2020 (the “Effective Date”):

Accepted and executed in two duplicate originals on behalf of the City of San Antonio pursuant to Ordinance Number 2020-01-_____-_____, dated _____, and Weston Urban, LLC pursuant to the authority of its _____.

Weston Urban, LLC,
a Limited Liability Company

By: _____

Printed Name: _____

Title: _____

Date: _____

City of San Antonio,
a Texas Municipal Corporation

By: _____

Printed Name: _____

Title: _____

Date: _____

Houston Street Tax Increment Reinvestment Zone #9

Executed as an acknowledgement that TIRZ #9 tax increment fund shall serve as the source of funding for the grant funds and city fee waivers.

Presiding Officer

Westside Tax Increment Reinvestment Zone #30

Executed as an acknowledgement that TIRZ #30 tax increment fund shall serve as the source of funding for the grant funds.

Presiding Officer

Approved As To Form:

Assistant City Attorney

EXHIBIT A: PROPERTY DESCRIPTION

1.110 acre tract of land situated in the corporate limits of the city of San Antonio, Bexar County, Texas and being all that portion of New City Block 254 described in two parcels comprising a 0.450 acre tract and 0.674 acre tract as conveyed unto the City of San Antonio by general warranty deed executed December 26, 1986 and recorded in Volume 3898, Page 1325 Bexar County Real Property Records, SAVE AND EXCEPT that certain 0.0009 acre tract conveyed out of said 0.674 acre tract to the San Antonio River Authority by deed recorded in Volume 18296, Page 465, said Real Property Records and as more particularly described below:

BEGINNING at a 5/8" iron rod found on the east right-of-way line of Laredo Street (a 45.00 foot wide public ROW) at the southwest corner of said 0.674 acre tract, same being at the northwest corner of a 0.794 acre tract conveyed unto Paul B. Carter, trustee by correction deed executed April 28, 1991 and recorded in Volume 5085, Page 713 said Real Property Records, for the southwest corner and POINT OF BEGINNING of this tract.

THENCE, along the east right of way line of said Laredo Street, North 04° 30' 29" East (record bearing cited as North 04° 06' East in said deed), at 98.02 feet pass the common northwest corner of said 0.674 acre and southwest corner of 0.450 acre tracts, in all a distance of 157.23 feet to a point at the intersection with the south right-of-way line of Commerce Street (a variable width public ROW), inside the façade of a brick building for the northwest corner of this tract and from whence a drill hole found bears North 04° 30' 29" East, 3.00 feet.

THENCE, along said south right of way line and with the north line of said 0.450 acre tract, South 87° 47' 31" East, 295.00 feet to a point inside the façade of a brick building on the west bank of San Pedro Creek same being at the northeast corner of said 0.450 acre tract for the northeast corner of this tract,

THENCE, along the west bank of said San Pedro Creek, South 03° 22' 25" West, 73.30 feet to a 1/2" iron rod found at the common southeast corner of said 0.450 acre tract, the northeast corner of said 0.674 acre tract and the northeast corner of said 0.0009 acre tract,

THENCE, along the common line south line of said 0.450 acre tract and the north line of said 0.674 acre tract, North 84° 43' 28" West, 8.02 feet to the northwest corner of said 0.0009 acre tract,

THENCE, departing said common line, South 01° 00' 48" West, 49.10 feet to the southwest corner of said 0.0009 acre tract,

THENCE, South 88° 59' 12" East, 8.00 feet to a mag nail on a concrete retaining wall found on the east line of said 0.674 acre tract at the southwest corner of said 0.0009 acre tract,

THENCE, South 01° 00' 48" West, 48.59 feet to a cross "+" chiseled in the top of a rock retaining wall originally found November 16, 2009 at the common southeast corner of said 0.674 acre tract and the northeast corner of said 0.794 acre tract for the southeast corner of this tract;

THENCE, North 85° 16' 42" West, 302.13 feet (cited in deed as 301.38 feet) to the POINT OF BEGINNING.

CONTAINING in all, 1.110 acres or 48,341 square feet of land, more or less.

Exhibit B: Project Site

Exhibit C: Fee Waiver Letter

Fee Waiver Program Admin

Welcome Erika

Submitted Date	Est. Claim Date	Request Status	Status Date	Approval
3/31/2020 11:24:53 AM	11/30/2021	Pending	3/31/2020 11:24:53 AM	<input type="checkbox"/> Council Approval(CCA) <input type="checkbox"/> Owner Occupied(DOO) <input type="checkbox"/> CCHIP(CHI) <input type="checkbox"/> Other CCDO Proj(OCP) <input type="checkbox"/> Small Business(SBS) <input type="checkbox"/> Historic Rehab(DHR) <input type="checkbox"/> CCHIP 18(CCH) <input type="checkbox"/> Legacy Business(DLB) Approval Codes <input checked="" type="checkbox"/> CCHIP 18(CCH)
Status/Notes		Ordinance Number(If Applicable):		
Pending City Council approval of Master Economic Incentives Agreement.				
Activity History		<div>Record Saved</div> <div> <input type="button" value="Save"/> <input type="button" value="Back To Home"/> </div>		

SAWS	
SAWS Waived Amount:	<input type="button" value="Update"/>
SAWS Initial Approval Date:	
SAWS Waiver Admin Fee- Date Paid:	
Renewal: <input type="radio"/> 1st(No cost) <input type="radio"/> 2nd <input type="radio"/> 3rd	

CITY	
City Waived Amount:	<input type="button" value="Update"/>
City Initial Approval Date:	
City Waiver Admin Fee- Date Paid:	
Funding Source:	Renewal:

Fee Waiver Program Form Information WaiverID CCH3402

No Attachment Records Found

☐ City City Status: NA
☐ SAWS SAWS Status: NA

APPLICANT INFORMATION

Project Owner: Weston Urban LLC
 Project Type: AffordableHousing
 Existing Homeowner:
 Other Owner Occupied:
 Existing housing units to be rehabilitated/Repaired:
 New Housing Units Planned (Total): 274
 Units at 120% AMI(for-sale only):
 Units at 80% AMI: 137
 Units at 60% AMI:
 Units at 30% AMI:
 Other (please specify):
 Total Affordable Housing Units: 137
 Studio/Efficiencies: 100
 1 Bedroom: 92
 2 Bedroom: 58
 3 Bedroom:
 4+ Bedroom:
 Is your property currently a designated historic landmark and/or located within a designated historic district? ☒ Yes ☐ No
 Are you a Small Business Owner?: ☐ Yes ☒ No
 Is your business located in the San Antonio city Limits?: ☐ Yes ☒ No
 Has your business been operating for a minimum of 2 years?: ☐ Yes ☒ No
 Do you consider yourself a small, minority and/or women-owned business?
 If yes, please list your certification type(s):
 Please list other certification type(s):

How many jobs do you expect to add after successful completion of this project?:

Is the business seeking fee waivers currently registered as a Legacy Business with the City of San Antonio?: ☐ Yes ☐ No ☐ Not Sure

Is the business seeking fee waivers been in operation for at least 20 years?: ☐ Yes ☒ No

APPLICANT POINT OF CONTACT

Project Role: Developer

Other Project Role:

Name: Reeves Craig

POC2-Name:

Title: VP

Company Name: Weston Urban LLC

POC2-Company Name:

Applicant Address: 425 Soledad

City: San Antonio

State: TX

Zip Code: 78205

Phone: 210-885-0350

POC2-Phone:

Fax:

Email: reeves@westonurban.com

POC2-Email:

PROJECT INFORMATION/DESCRIPTION

Project Address: 322 W. Commerce

City Council District: 1

Property/Parcel ID: 102550, 102552

Acreage: 1.08

Proposed Land Used of Project: Residential

Commercial Sq. Ft.:

Residential Sq. Ft.:

Other Proposed Land Used of Project:

Proposed redevelopment to include approximately 274 units in a mixed-use, mixed income project.

Project Description:

Proposed Level of Investment: \$73,000,000.00

Construction Start Date: 11/30/2021

Construction Completion Date: 11/30/2023

Current Zoning of Project Site: D

Are you requesting a City fee waiver?: ☒ Yes ☐ No

City Fee Waiver Request: \$0.00

City Fee Waiver Approved: \$0.00

Applied for Other Incentive?: ☐ Yes ☒ No

If so, what Dept(s)?:

SAWS Sewer and Water Impact Fee?: ☒ Yes ☐ No

SAWS Fee Waiver Request: \$1,000,000.00

SAWS Fee Waiver Approved: \$0.00

Request Submitted By: Web User

Request Submitted Date: 3/31/2020 11:24:53 AM

Last Modified By: 139609

Last Modified Date: 5/26/2020 3:41:02 PM

Request Status: Pending

Status Date: 3/31/2020 11:24:53 AM

Ordinance Number:

Status Reason: Pending City Council approval of Master Economic Incentives Agreement.

SAWS Waived Amt:

SAWS Initial Approval Date:

SAWS Waiver Adm Fee Date Paid:

SAWS Renewal:

SAWS Waived Date:

SAWS Who Waived:

City Initial Approval Date:

City Waived Amt:

City Waiver Admin Fee Date Paid:

City Renewal:

City Who Waived:

City Waived Date:

Est. Claim Date: 11/30/2021

City Approved: No

SAWS Approved: No

City Expiration Date:

SAWS Expiration Date:

City Council Approval(CCA): No

Owner Occupied Rehabilitation(DOO): No

ED Industry: No

Center City Housing Infill Policy(CHI): No

Other CCDO Projects(OCF): No

Small Business(SBS): No

Historic Rehabilitation(DHR): No

CCHIP 18(CCH): No

Legacy Business(DLB): No

Approval Code: CCHIP 18(CCH)

No Attachment Records Found

Select file to upload: No file chosen

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Exhibit D: Real Estate Sales Contract

**Real Estate Sales Contract
(Continental Hotel)**

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Authorizing Ordinance: 2020-__ - __ - __

"Seller": The City of San Antonio (the "**City**")

Address: City of San Antonio, P.O. Box 839966, San Antonio, TX 78283-3966

Type of Entity: Texas Municipal Corporation

Seller's Counsel: Victoria Shum

Address: City Attorney's Office, City of San Antonio,
P.O. Box 839966, San Antonio, TX 78283-3966

Phone: 210-207-8994

Email: victoria.shum@sanantonio.gov

Fax: 210-207-4004

“Buyer”: Weston Urban, LLC

Address: 112 East Pecan St., Suite 175, San Antonio, TX
78205

Phone: 210-630-7519

Email: randy@westonurban.com

Type of Entity: Texas limited partnership

Buyer’s Counsel: Golden Steves & Gordon, LLP, Attn: Riley W.
Vanham

Address: 200 E. Basse Road, Suite 200, San Antonio, TX
78209

Phone: 210-745-3700

Email: rvanham@goldensteves.com

Property: Approximately 1.110 acre tract of land situated in the corporate limits of the city of San Antonio, Bexar County, Texas and being all that portion of New City Block 254 described in two parcels comprising a 0.450 acre tract and 0.674 acre tract as conveyed unto the City of San Antonio by general warranty deed executed December 26, 1986 and recorded in Volume 3898, Page 1325 Bexar County Real Property Records, SAVE AND EXCEPT that certain 0.0009 acre tract conveyed out of said 0.674 acre tract to the San Antonio River Authority by deed recorded in Volume 18296, Page 465 and further described in **Exhibit A**, attached hereto and incorporated (the “**Land**”), together with the Improvements, Additional Interests and Personal

Property (collectively, the **"Property"**).

"Title Company": Chicago Title of Texas, LLC

Address: 15727 Anthem Parkway, Suite 210, San Antonio,
Texas 78249

Phone: 210-482-3560

Fax: 210-482-3564

Email: doug.becker@ctt.com

"Purchase Price": FOUR MILLION AND SEVEN HUNDRED
THOUSAND DOLLARS AND 00/100 CENTS
(\$4,700,000.00)

"Earnest Money": FIVE HUNDRED THOUSAND 00/100
DOLLARS (\$500,000.00)

"Option to Extend Fee": TWENTY FIVE THOUSAND 00/100
DOLLARS (\$25,000.00)

Effective Date: The later of: (a) the effective date of the
Authorizing Ordinance; and (b) the date a
representative of the Title Company signs a
receipt for this fully executed Agreement
(**"Effective Date"**).

County for Performance: Bexar County, Texas

1. Deadlines and Other Dates.

All deadlines in this Agreement expire at 5:00 P.M. local time where the Property is located. If a deadline falls on a Saturday, Sunday, or federal or local holiday, the deadline will be extended to the next day that is not a Saturday, Sunday, or holiday. Time is of the essence.

- | | | |
|------|-------------------------------------|--|
| 1.01 | "Earnest Money Deadline" | 3 Business Days after the Effective Date |
| 1.02 | "Option Extension Deadline" | The expiration of the Inspection Period |
| 1.03 | Delivery of Title Commitment | 20 Days after the Effective Date |
| 1.04 | "Buyer's Objection Deadline" | 15 Days after receipt of (i) Title
Commitment, (ii) legible copies of |

instruments references in the Title
Commitment and (iii) the Survey

- | | | | |
|------|--|----|--|
| 1.05 | “Seller’s Cure Notice
Deadline” | 15 | Days after Buyer’s Objection Deadline |
| 1.06 | “Buyer’s Termination
Deadline” | 10 | Days after Seller’s Cure Notice
Deadline |
| 1.07 | “Inspection Period” | | The period of time commencing on the
Effective Date and ending at 5:00 p.m.
San Antonio, Texas time on the date
that is 120 days after the Earnest
Money Deposit Deadline, subject to
extension as herein provided. |
| 1.08 | “Closing Date” | 30 | Days after the expiration of the
Inspection Period (as the same may be
extended) or such earlier time mutually
agreed upon in writing by both parties |

The above deadlines may be altered by the mutual agreement of the parties in writing. The Director of the Center City Development & Operations Department may consent to such changes on behalf of Seller without further authorization of City Council.

2. Closing Documents.

2.01 At closing, Seller will deliver the following items:

Deed (as hereafter defined), duly signed and acknowledged by Seller, which shall convey good and indefeasible fee simple title to the Property to Buyer, free and clear of all exceptions, reservations and other matters affecting title to the Property, other than the Permitted Exceptions;

Two (2) counterparts of a blanket assignment and bill of sale, duly signed and acknowledged by Seller, assigning and conveying to Buyer title to all personal property covered by this Agreement, and all warranties pertaining thereto, in a form reasonably acceptable to each of Buyer and Seller, free and clear of all liens and encumbrances, other than the Permitted Exceptions;

The Title Policy;

IRS Non-foreign Person Affidavit;

Such other documents as the Title Company may reasonably require to consummate this transaction; and

Evidence of Seller's authority to close this transaction.

2.02 At closing, Buyer will deliver the following items:

Such other documents as the Title Company may reasonably require to consummate this transaction;

Evidence of Buyer's authority to consummate this transaction; and

Purchase Price, subject to the adjustments and prorations contemplated by this Agreement.

2.03 The documents listed above are collectively known as the "**Closing Documents.**" Unless otherwise agreed by the parties in writing before closing, the Deed Without Warranty to be delivered by Seller at Closing (the "**Deed**") will be substantially in the form attached as **Exhibit C.**

3. Exhibits.

The following are attached to and are incorporated into this Real Estate Sales Contract (this "**Agreement**") for all purposes as if fully set forth herein:

Exhibit A—Description of the Land

Exhibit B—Representations

Exhibit C—Form of Deed

Exhibit D— Equity Interest Agreement

Exhibit E—Notices

Exhibit F—Conditions for entry onto Property

4. Purchase and Sale of Property.

4.01 *Exchange.* Seller will sell and convey the Property to Buyer, and Buyer will buy and pay Seller for the Property, subject to and in accordance with the terms, provisions and conditions of this Agreement. The promises by Buyer and Seller stated in this Agreement are the consideration for the formation of this Agreement.

As independent consideration for the rights granted to Buyer hereunder, Buyer has paid to Seller the sum of One Hundred and No/100 Dollars (\$100.00), the receipt and sufficiency of which are hereby acknowledged. The independent consideration is non-refundable and shall be applied against the Purchase Price at closing.

4.02 *Additional Interests.* The Property includes all improvements situated on the Land (the "**Improvements**"), together with all right, title, and interest of Seller, if any, in and to all appurtenances, strips or gores, roads, easements, streets, and rights-of-way bounding the Land; all utility capacity, water rights, licenses, permits, entitlements, and bonds, if any, and all other rights and benefits attributable to the Land; and all rights of ingress and egress thereto (collectively, the "**Additional Interests**") (except that the Additional Interests do not include, and Seller specifically reserves, such of the following interests as Seller may hold by virtue of being a municipality as opposed to the owner of the fee-simple interest in the Property: utility easements, drainage easements, streets, alleys, and other rights-of-way dedicated for public use) and all tangible personal property, fixtures, equipment and machinery of any kind owned by Seller and located on or attached to, or used in connection with the Land or Improvements (collectively, the "**Personal Property**").

4.03 *Equity Interest Agreement.* Seller and Buyer shall enter into an Equity Interest Agreement, in the form attached hereto and incorporated as **Exhibit D**, at closing.

5. [INTENTIONALLY OMITTED]

6. Earnest Money and Option to Extend.

6.01 *Earnest Money.* Buyer shall deposit the Earnest Money with the Title Company no later than the Earnest Money Deadline. Title Company shall execute and deliver to both Buyer and Seller an earnest money receipt substantially in the form attached at the end of this Agreement. The entire Earnest Money shall be applied towards the Purchase Price at closing, or shall be otherwise held and disbursed by the Title Company as herein provided.

6.02 *Investment Option.* Buyer may direct Title Company to invest the Earnest Money in an interest-bearing account in a federally insured financial institution by giving notice to Title Company and satisfying Title Company's requirements for investing the Earnest Money in an interest-bearing account. Any interest earned on the Earnest Money shall be paid to the party that becomes entitled to the Earnest Money. Accrued interest shall be a credit against the Purchase Price at closing.

6.03 *Option to Extend.* Seller grants Buyer the unrestricted right to extend the Inspection Period for 30 days by (i) providing Seller written notice of its intent to exercise its Option to Extend on or before the Option Extension Deadline and (ii) delivering to the Title Company the Option to Extend Fee on or before the Option Extension Deadline, parts (i) and (ii) referred herein as the **"Option Conditions"**. If Buyer fails to comply with the Option Conditions within the time prescribed, the Inspection Period will not be extended. The Option to Extend Fee will not be refundable to Buyer (except in the event of a default by Seller or as otherwise provided in this Agreement), but shall be applied against the Purchase Price at closing. **Time is of the essence for this paragraph and strict compliance with the time for performance is required.**

7. Title and Survey.

7.01 *Review of Title.* The following statutory notice is provided to Buyer on behalf of the real estate licensees, if any, involved in this transaction: **Buyer is advised that it should either have the abstract covering the Property examined by an attorney of Buyer's own selection or be furnished with or obtain a policy of title insurance.**

7.02 *Title Commitment; Title Policy.* **"Title Commitment"** means a Commitment for Issuance of an Owner Policy of Title Insurance by Title Company, as agent for Underwriter, stating the condition of title to the land. The effective date stated in the Title Commitment must be after the Effective Date of this Agreement. **"Title Policy"** means an Owner Policy of Title Insurance issued by Title Company, as agent for Underwriter, on the standard form in use in the State of Texas, in the amount of the Purchase Price, subject only to the Permitted Exceptions and the standard printed exceptions therein, except that (i) the exception relating to restrictions against the Property shall be deleted, except for such restrictions as may be included in the Permitted Exceptions; (ii) the exception relating to standby fees and ad valorem taxes shall except only to taxes owing for the current year and subsequent assessments for prior years due to change in land usage or ownership; (iii) the survey exception shall be deleted except "shortages in area"; and (iv) there shall be no exception for rights of parties in possession or for visible or apparent roadways or easements not shown on the Survey.

7.03 *Delivery of Title Commitment; Survey.* Seller must deliver the Title Commitment to Buyer by the deadlines stated in Section 1.

At any time during the Inspection Period (as the same may be extended), Buyer may obtain, at Buyer's expense, a current survey of the Land, in a form that substantially complies with the Texas Society of Professional Surveyors Standards and Specifications for a Category 1A, Condition II Survey or such other form as Buyer may elect (the "**Survey**") prepared by a surveyor selected by Buyer. The Survey shall be certified to Seller, Buyer and Title Company. For purposes of the property description to be included in the Deed, Title Policy and other documents to be delivered pursuant to Section 2 above, the field notes prepared by the surveyor in connection with the Survey shall control over any conflicts or inconsistencies with the legal description contained herein or in the initial Title Commitment (it being acknowledged that the Title Commitment will be updated to include the legal description of the Land prepared in connection with the Survey), and such field notes shall be incorporated herein by this reference upon completion and included as the property description in the Deed and the Title Policy.

7.04 *Buyer's Objections.* Buyer has until the Buyer's Objection Deadline to review the Survey, Title Commitment, and legible copies of the title instruments referenced in them and notify Seller of Buyer's objection to any of them ("**Buyer's Objections**"). Buyer will be deemed to have approved all matters reflected by the Survey and Title Commitment to which Buyer has made no Buyer's Objection by the Buyer's Objection Deadline (other than Mandatory Cure Items). The matters that Buyer either approves or is deemed to have approved are "**Permitted Exceptions.**"

7.05 *Seller's Timely Notice.* If Buyer notifies Seller of any Buyer's Objections, Seller has until Seller's Cure Notice Deadline to notify Buyer whether Seller agrees to cure the Buyer's Objections before closing ("**Cure Notice**"). If Seller does not timely give its Cure Notice or timely gives its Cure Notice but does not agree to cure all the Buyer's Objections before closing, Buyer may, on or before Buyer's Termination Deadline, notify Seller that this Agreement is terminated, whereupon all Earnest Money and the Option to Extend Fee (if any) shall be returned to Buyer. In the absence of such timely notice, Buyer will proceed to close, subject to the terms, provisions and conditions of this Agreement and Seller's obligations (i) with respect to Mandatory Cure Items and (ii) to cure only the Buyer's Objections that Seller has agreed to cure in the Cure Notice. Seller further covenants and agrees with Buyer that, from the Effective Date until closing, Seller shall not sell, assign or convey any right, title or interest whatsoever in or to the Property, or create or permit to exist any lien, security interest, easement, encumbrance, charge or condition affecting the Property (other than the Permitted Exceptions) without promptly discharging the same prior to closing.

7.06 *Seller's Deadline.* Notwithstanding anything in this Agreement to the contrary, at or before Closing, Seller must, at its sole cost and expense, resolve and otherwise cause to be removed and released all items that are listed in Schedule C of the Title Commitment, remove all liens affecting the Property, remove all exceptions that arise by, through, and under Seller after the Effective Date of this Agreement (collectively, the "**Mandatory Cure Items**"), and cure the Buyer's Objections that Seller has agreed to cure.

7.07 *Documents.* Within ten (10) days following the Effective Date, Seller shall deliver to Buyer copies of all documents as can reasonably be obtained in Seller's possession pertaining to the development, ownership, or operation of the Property (collectively, the "**Documents**"), including but not limited to, (i) copies of written contracts or other agreements affecting the Property (the "**Property Agreements**"); (ii) copies of third party engineering or inspection reports concerning the Property; (iii) copies of plans and specifications for the Improvements in the possession of Seller or reasonably available to Seller; (iii) copies of any environmental reports concerning the Property; (iv) copies of the certificate(s) of occupancy covering the Improvements; (v) copies of any licenses or permits applicable to the Property.

8. Inspection Period.

8.01 *Entry onto the Property.* Buyer may enter the Property before closing to inspect it and to perform such other investigations as Buyer may desire in its sole discretion, subject to compliance with the provisions of **Exhibit F** attached hereto.

8.02 *Buyer's Right to Terminate.* Buyer may terminate this Agreement for any reason (or nor reason at all) by notifying Seller of such election before the end of the Inspection Period, whereupon the Earnest Money shall be promptly returned to Buyer.

9. Representations.

The parties' representations stated in **Exhibit B** are true and correct as of the Effective Date and must be true and correct on the Closing Date.

10. Property Condition until Closing; No Recording of Contract.

10.01 *Maintenance and Operation.* Until the Closing Date, Seller will (a) maintain the Property as it existed on the Effective Date, except for reasonable wear and tear and casualty damage; (b) operate the Property in the same manner as it was operated on the Effective Date; (c) comply with all contracts and governmental regulations affecting the Property; (d) promptly advise Buyer of any pending or threatened litigation, arbitration or administrative hearing before any governmental body or agency which concerns or affects the Property and of which Seller becomes aware, which is instituted or threatened after the Effective Date hereof; (e) maintain and

keep in full force and effect the present fire, casualty and liability insurance maintained by Seller with regard to the Property and (f) not take or omit to take any action which would have the effect of violating any of the representations, warranties, covenants or agreements of Seller contained herein. In addition, during the period between the Effective Date and the Closing Date, Seller shall not, without the prior written consent of Buyer in its sole discretion, (i) enter into any leases affecting the Property or (ii) enter into, extend or renew any Property Agreement or any other agreement which might be or become binding on Buyer or the Property after the Closing Date. Seller shall, at the request of Buyer, terminate all Property Agreements prior to the Closing Date at no cost to Buyer, unless Buyer elects in writing to assume same by written notice delivered to Seller prior to the end of the Inspection Period. Nothing in this paragraph shall prevent the Buyer from applying for and obtaining a demolition permit affecting the Property.

10.02 *Casualty Damage.* Seller will notify Buyer promptly after discovery of any casualty damage to the Property. Seller will have no obligation to repair or replace the Property if it is damaged by casualty before closing. Buyer may terminate this Agreement if the casualty damage that occurs before closing would materially affect Buyer's intended use of the Property, by giving notice to Seller within fifteen (15) days after Buyer's actual knowledge of such casualty or Buyer's receipt of Seller's notice of the casualty (or before closing if Seller's notice of the casualty is received less than fifteen (15) days before closing), whereupon the Earnest Money and Option to Extend Fee (if any) shall be promptly returned to Buyer. If Buyer does not terminate this Agreement, Seller will convey the Property to Buyer in its damaged condition, but the net proceeds of any insurance collected by Seller prior to closing and the amount of any deductible under the insurance policy(ies) maintained by Seller with respect to the Property as of the Effective Date, less all commercially reasonable amounts expended by Seller prior to closing to repair such damage (if any), will be paid to Buyer at closing, and all unpaid claims and rights of Seller under such insurance that have not been collected by the time of closing shall be assigned to Buyer at closing.

10.03 *Condemnation.* Seller will notify Buyer promptly after Seller receives notice that any part of the Property has been or is threatened to be condemned or otherwise taken by a governmental or quasi-governmental authority. Buyer may terminate this Agreement if the condemnation would materially affect Buyer's intended use of the Property by giving notice to Seller within fifteen (15) days after Buyer's actual knowledge of such condemnation action or receipt of Seller's notice to Buyer (or before closing if Seller's notice is received less than fifteen (15) days before closing), whereupon the Earnest Money and Option to Extend Fee (if any) shall be promptly returned to Buyer. If Buyer does not terminate this Agreement (a) Buyer and Seller will each have the right to appear and defend their respective interests in the Property in the condemnation proceedings, (b) any award in condemnation will be assigned to Buyer, and (c) if

the taking occurs before closing, the description of the Property will be revised to delete the portion taken.

10.04 *No Recording.* Neither party shall file this Agreement or any memorandum of this Agreement in the real property records of any county. If, however, either party records this Agreement or a memorandum of this Agreement, the other party may, in addition to all other remedies available to such party in this Agreement, terminate this Agreement and record a notice of termination.

11. Termination.

11.01 Disposition of Earnest Money after Termination.

- a. *To Buyer.* If Buyer terminates this Agreement in accordance with any of Buyer's rights to terminate and Buyer is entitled to a return of the Earnest Money and/or Option to Extend Fee (if any) pursuant to the provisions of this Agreement, Seller will, within five (5) days of receipt of Buyer's termination notice, authorize Title Company to deliver the Earnest Money and/or Option to Extend Fee (if any), as applicable, to Buyer.
- b. *To Seller.* If Seller terminates this Agreement in accordance with any of Seller's rights to terminate and Seller is entitled to a return of the Earnest Money and/or Option to Extend Fee (if any) pursuant to the provisions of this Agreement, Buyer will, within five (5) days of receipt of Seller's termination notice, authorize Title Company to pay and deliver the Earnest Money and/or Option to Extend Fee (if any), as applicable, to Seller.

11.02 *Duties after Termination.* If this Agreement is terminated, Buyer will promptly return to Seller all Documents relating to the Property that Seller has delivered to Buyer and all copies that Buyer has made of the Documents. After return of the Documents and copies, and a return of the Earnest Money and Option to Extend Fee (if any) to the party entitled to same pursuant to the terms, provisions and conditions of this Agreement, neither party will have further duties or obligations to the other under this Agreement, except for those obligations that expressly survive termination of this Agreement.

12. Closing.

12.01 *Closing.* This transaction will close at Title Company's offices on the Closing Date. At closing, the following will occur:

- a. *Closing Documents.* The parties will execute and deliver the Closing Documents.

- b. *Payment of Purchase Price.* Buyer will deliver the Purchase Price and other amounts that Buyer is obligated to pay under this Agreement to Title Company in funds acceptable to Title Company. The Earnest Money and Option to Extend Fee (if any) will be applied to the Purchase Price.
- c. *Disbursement of Funds; Recording; Copies.* Title Company will be instructed to disburse the Purchase Price and other funds in accordance with this Agreement, record the Deed and the other Closing Documents directed to be recorded, and distribute documents and copies in accordance with the parties' written instructions.
- d. *Possession.* Seller will deliver possession of the Property to Buyer, subject only to the Permitted Exceptions at closing.
- e. Buyer need not close if Seller cannot or does not deliver indefeasible title at closing. If Buyer does not close for want of indefeasible title, then in addition to (and not in lieu of) all other rights and remedies available to Buyer in this Agreement, the Earnest Money and Option to Extend Fee (if any) shall be returned to Buyer.

12.02 *Transaction Costs.*

- a. Buyer will pay:
 - i. the additional premium for the "survey/area and boundary deletion" in the Title Policy; and
 - ii. Buyer's expenses and attorney's fees.
- b. Seller will pay:
 - i. the basic charge for the Title Policy;
 - ii. the costs to obtain, deliver, and record all documents other than those to be recorded at Buyer's expense; and
 - iii. Seller's expenses and attorney's fees.
- c. Buyer and Seller will each pay half of:

- i. the escrow fee charged by Title Company;
 - ii. the costs to record all documents to cure Title Objections agreed to be cured by Seller;
 - iii. Title Company's inspection fee to delete from the Title Policy the customary exception for parties in possession;
 - iv. the costs to obtain certificates or reports of ad valorem taxes; and
 - v. the costs to deliver copies of the instruments described in Article 1.
- d. *Ad Valorem Taxes.* Property owned by Seller is exempt under Texas Property Tax Code § 11.11. At closing property taxes will be prorated according to Texas Tax Code § 26.10.
- e. *Income and Expenses.* Income and expenses pertaining to operation of the Property will be prorated as of the Closing Date on an accrual basis and paid at closing as a credit or debit adjustment to the Purchase Price. Invoices that are received after closing for operating expenses incurred on or before the Closing Date and not adjusted at closing will be prorated between the parties as of the Closing Date, and Seller will pay its share within ten (10) days of notice of Buyer's invoice.
- f. *Post-closing Adjustments.* If errors in the proration's made at closing are identified within ninety days after closing, Seller and Buyer will make post-closing adjustments to correct the errors within fifteen (15) days of receipt of notice of the errors. The terms and provisions of this Section 12.02(f) shall survive Closing.

13. Default and Remedies.

13.01 *Seller's Default.* If Seller fails to perform any of its obligations under this Agreement within five (5) days following written notice from Buyer specifying same (except due to a default by Buyer) or if any of Seller's representations or warranties are not true and correct as of the Effective Date and on the Closing Date ("**Seller's Default**"), Buyer may elect either of the following as its sole and exclusive remedy:

- a. *Termination.* Buyer may terminate this Agreement by giving notice to Seller on or before the Closing Date, whereupon the Earnest Money and Option to Extend Fee (if any) shall be promptly returned to Buyer, and this Agreement shall thereafter be terminated.
- b. *Specific Performance.* Buyer may enforce specific performance of Seller's obligations under this Agreement and recover from Seller all costs and expenses incurred by Buyer in connection with such specific performance (including, without limitation, reasonable attorney's fees and court costs). In addition, to the extent that specific performance is not available to Buyer as a result of the voluntary actions of Seller, then Buyer may exercise any rights or remedies as may be available to Buyer at law or in equity.

13.02 *Buyer's Default.* If Buyer fails to perform any of its obligations under this Agreement within five (5) days following written notice from Seller specifying same (except due to a default by Seller) ("**Buyer's Default**"), Seller may, as its sole and exclusive remedy, terminate this Agreement by giving notice to Buyer on or before the Closing Date and have the Earnest Money and Option to Extend Fee (if any) paid to Seller. The Earnest Money is agreed upon by and between the Seller and Buyer as liquidated damages due to the difficulty and inconvenience of ascertaining and measuring actual damages, and the uncertainty thereof, and no other damages, rights or remedies shall in any case be collectible, enforceable or available to the Seller against Buyer, and the Seller shall accept the Earnest Money as the Seller's total damages and relief, Seller hereby waiving any other rights or remedies to which it may otherwise be entitled. The foregoing limitations shall not apply to Buyer's express indemnities pursuant to Exhibit F.

14. Prohibited Interests in Contracts.

14.01 The Charter of the City of San Antonio and the City of San Antonio Code of Ethics prohibit a City officer or employee, as those terms are defined in §2-52 of the Code of Ethics, from having a direct or indirect financial interest in any contract with the City. An officer or employee has a prohibited "financial interest" in a contract with the City or in the sale to City of land, materials, supplies, or service, if any of the following individuals or entities is a party to the contract or sale:

- a. A City officer or employee, his or her spouse, sibling, parent, child, or other family member within the first degree of consanguinity or affinity;
- b. An entity in which the officer or employee, or his or her parent, child, or spouse directly or indirectly owns (i) 10% or more of the voting stock or shares of the entity, or (ii) 10% or more of the fair market value of the entity; or

- c. An entity in which any individual or entity listed above is (i) a subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary entity.

14.02 Buyer warrants and certifies, and this Agreement is made in reliance thereon, that:

- a. none of the above listed individuals or entities is a party to this Agreement; and
- b. Buyer has tendered to Seller a Discretionary Contracts Disclosure Statement in compliance with the City of San Antonio Code of Ethics.

15. Dispute Resolution.

15.01 As a condition precedent to bringing any action arising out of or relating to this Agreement or any aspect thereof, including an action for declaratory relief but not an action specifically excepted below, the disputants must first submit in good faith to non-binding mediation. The parties may not assert limitations, laches, waiver, and estoppel based upon attempts to mediate.

15.02 Filing suit on a claim that should be mediated hereunder waives the filer's right to demand mediation. But one party's waiver does not affect another party's right. A defendant does not waive mediation for so long as, within a reasonable time after appearing, the defendant gives written notice to the plaintiff or its counsel of intent to require compliance with this paragraph.

15.03 Mediation must be conducted in San Antonio, Bexar County, Texas.

15.04 The party desiring relief has the burden to initiate mediation. Waiting for another party to initiate mediation does not waive the right to it.

15.05 If the parties can otherwise agree on a mediator, they may do so. Alternatively, either party may petition any court of competent jurisdiction to appoint a mediator. The only predicate issues the court need consider before appointing a mediator are whether (i) the copy of the contract before the court is authentic, and (ii) the contract was duly signed and delivered by all parties to be bound to mediate. If neither of those issues is denied under oath, the court may appoint a mediator upon motion, without trial.

15.06 Mediator fees must be borne equally.

15.07 The parties need not mediate before going to court for (i) either party to seek emergency injunctive relief or (ii) Buyer to enforce its rights and remedies under Section 13.01 above.

16. Miscellaneous Provisions.

16.01 *Applicable Law.* This Agreement is entered into in San Antonio, Bexar County, Texas. **THE CONSTRUCTION OF THIS AGREEMENT AND THE RIGHTS, REMEDIES, AND OBLIGATIONS ARISING THEREUNDER SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS.** Provided, however, the Texas conflicts of law rules must not be used to apply the laws of a jurisdiction other than Texas. The obligations performable hereunder by both parties are performable in San Antonio, Bexar County, Texas.

16.02 *Severability.* If any portion hereof is determined to be invalid or unenforceable, such determination does not affect the remainder hereof.

16.03 *Successors.* This Agreement inures to the benefit of and is binding on the heirs, representatives, successors, and permitted assigns of each party. This clause does not authorize any assignment not otherwise authorized.

16.04 *Integration.* **This written Agreement represents the final agreement between the parties relating to the conveyance of the property from Seller to Buyer and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no oral agreements between the parties.**

16.05 Modification.

16.05.01 This Agreement may not be changed orally but only by a written agreement, signed by the party against whom enforcement of any modification is sought. Subject to the foregoing, any of the terms of this Agreement may be modified at any time by the party entitled to the benefit thereof, but no such modification, express or implied, affects the right of the modifying party to require observance of either (i) the same term or condition as it applies on a subsequent or previous occasion, or (ii) any other term hereof.

16.05.02 The Director or designee of the City's Center City Development & Operations may, without further City Council action, agree on behalf of Seller to extensions of deadlines or other non-material modifications to the rights and obligations of the parties under this Agreement.

16.06 *Third Party Beneficiaries.* This Agreement is intended for the benefit of the parties hereto and their successors and permitted assigns only. There are no third party beneficiaries hereof.

16.07 *Notices.* Any notice provided for or permitted hereunder must be in writing and by certified mail, return receipt requested, addressed to the parties at their respective addresses set forth in the preamble hereof. Notice shall be deemed delivered upon deposit, properly addressed and postage prepaid, with the United States Postal Service. Failure to use certified mail does not defeat the effectiveness of notice actually received, but such notice is effective only on actual receipt. Address for notice may be changed by giving 3 days prior written notice hereunder.

16.08 *Pronouns.* In construing this Agreement, plural constructions include the singular, and singular constructions include the plural. No significance attaches to whether a pronoun is masculine, feminine, or neuter. The words "herein," "hereof," and other, similar compounds of the word "here" refer to this entire Agreement, not to any particular provision of it.

16.09 *Captions.* Paragraph captions in this Agreement are for ease of reference only and do not affect the interpretation hereof.

16.10 *Counterparts.* This Agreement may be executed in multiple counterparts, each of which may be a copy or an original, whether or not all parties sign the same document. Regardless of the number of counterparts, they constitute only one agreement. In making proof of this Agreement, one need not produce or account for more counterparts than necessary to show execution by or on behalf of all parties.

16.11 *Further Assurances.* The parties must execute and deliver such additional documents and instruments as may be reasonably required to effect fully the provisions hereof. No such additional document(s), however, shall alter the rights or obligations of the parties as contained in this Agreement.

16.12 *Assignment.* Without obtaining Seller's consent, which is not to be unreasonably withheld, Buyer may assign this Agreement and Buyer's rights under it only to an entity in which Buyer can, directly or indirectly, direct or cause the direction of its management and policies, whether through the ownership of voting securities, in its capacity as a general partner or manager or otherwise. Any other assignment of this Agreement without Seller's consent is void.

16.13 *Tax Deferred Exchange.* If Buyer requests, Seller shall cooperate with Buyer in effecting Buyer's exchange under §1031 of the United States Internal Revenue Code pursuant to which Buyer will acquire the Property; provided, however, (i) the exchange shall be at no

expense to Seller; (ii) the exchange shall not delay the Closing Date for transfer of the Property; and (iii) Seller shall not be required to acquire title to any proposed exchange properties or to incur any liability to accommodate Buyers's exchange. Buyer shall indemnify, defend and hold Seller harmless from and against any and all claims, demands, costs and expenses which Seller may sustain or incur resulting from the consummation of such transfer of the Property as a §1031 exchange rather than a sale.

16.14 *Ambiguities Not to Be Construed against Party Who Drafted Contract.* The rule of construction that ambiguities in a document will be construed against the party who drafted it will not be applied in interpreting this Agreement.

16.15 *No Special Relationship.* The parties' relationship is an ordinary commercial relationship, and they do not intend to create the relationship of principal and agent, partnership, joint venture, or any other special relationship.

16.16 Intentionally Deleted

16.17 *Waiver of Consumer Rights.* Buyer waives its rights under the Texas Deceptive Trade Practices-Consumer Protection Act, Section 17.41 et seq. of the Texas Business and Commerce Code, a law that gives consumers special rights and protections. After consultation with an attorney of its own selection, Buyer voluntarily consents to this waiver.

16.18 *Incorporation by Reference.* All exhibits to this Agreement are incorporated into it by reference for all purposes as if fully set forth.

16.19 *Administrative Agreements.* The Director or designee of City's Center City Development & Operations Department may, without further City Council action, agree to, sign, and deliver on behalf of the City all consents, certificates, memoranda, estoppels, and modifications of nonmaterial rights and obligations arising under this agreement and may declare defaults and pursue remedies for such defaults.

16.20 *City Process.* Nothing in this Agreement obligates the City to take any particular action(s) or make any particular decision(s) regarding sale of the Property, or regarding any issues raised by the City's consideration of a sale of the Property, except as stated in this Agreement, whether such action(s) or decision(s) would customarily be made by the City Council, the Planning Commission or any department of the City. Nor shall this Agreement be deemed to constitute any prejudgment or predetermination of any matters related to the sale or development of the Property, including any related discretionary action(s), waiver of any permit requirements, reduced fees or abbreviation of any city procedures. Seller will cooperate with

Buyer in such matters to the extent allowed by law and as directed by its governing body. Buyer understands that there is no agreement or guarantee related to the outcome or approval of any application that Buyer may submit for the Property.

16.21 *Attorneys' Fees.* In the event it becomes necessary for either party to file a suit to enforce this Agreement or any provisions contained herein, the prevailing party shall be entitled to recover, in addition to all other remedies or damages, reasonable attorneys' fees and costs of court incurred in such suit.

16.22 *Real Estate Commission.* Each party hereby represents and warrants that it has not entered into any agreements which could give rise to a real estate commission being owed as a result of this Agreement. Buyer hereby indemnifies and agrees to hold Seller harmless from any loss, liability, damage, cost or expense (including reasonable attorneys' fees) resulting to the Seller by reason of any brokerage fees or claims by brokers arising out of any agreement entered into by Buyer in connection with the Property. Notwithstanding anything to the contrary contained herein, the representations, warranties and indemnities set forth in this Section 16.22 shall survive the closing.

17. Public Information.

Buyer acknowledges that this instrument is 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 waives an otherwise applicable exception to disclosure.

18. Condition of Property.

(a) Disclaimer. Except for the representations, warranties and covenants of Seller expressly stated in this Agreement (including, without limitation, all exhibits attached hereto) or in the Closing Documents (collectively, the "**Express Warranties**"), Seller hereby specifically disclaims any warranty, guaranty, or representation; oral or written; past, present or future, of, as to, or concerning (i) the nature and condition of the Property, including but not by way of limitation, the water, soil, geology and the suitability thereof, for any and all activities and uses which Buyer may elect to conduct thereon, income to be derived therefrom or expenses to be incurred with respect thereto, or any obligations or any other matter or thing relating to or affecting the same; (ii) the manner of construction and condition and state of repair or lack of repair of any improvements located thereon; (iii) the nature and extent of any easement, right-of-way, lease, possession, lien, encumbrance, license, reservation, condition or otherwise; and (iv) the compliance of the Property or the operation of the Property with any laws, rules, ordinances, or regulations of any government or other body. EXCEPT FOR THE EXPRESS WARRANTIES, IN CONNECTION WITH THE CONVEYANCE OF THE PROPERTY AS PROVIDED FOR HEREIN, SELLER HAS NOT MADE AND DOES NOT MAKE, ANY REPRESENTATIONS, WARRANTIES OR COVENANTS OF ANY KIND OR CHARACTER

WHATSOEVER, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE QUALITY OR CONDITION OF THE PROPERTY, THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH BUYER MAY CONDUCT THEREON, COMPLIANCE BY THE PROPERTY WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND SPECIFICALLY, SELLER DOES NOT MAKE ANY REPRESENTATIONS REGARDING HAZARDOUS WASTE, AS DEFINED BY THE LAWS OF THE STATE OF TEXAS AND ANY REGULATIONS ADOPTED PURSUANT THERETO OR THE U. S. ENVIRONMENTAL PROTECTION AGENCY REGULATIONS AT 40 C.F.R., PART 261, OR THE DISPOSAL OF ANY HAZARDOUS WASTE OR ANY OTHER HAZARDOUS OR TOXIC SUBSTANCES IN OR ON THE PROPERTY. Subject to the Express Warranties, Buyer agrees to accept the Property at closing with the Property being in its present AS IS condition WITH ALL FAULTS.

(b) Property Condition. BUYER ACKNOWLEDGES AND AGREES THAT EITHER BUYER IS, OR HAS ENGAGED AND IS RELYING ON PERSONS WHO ARE, EXPERIENCED IN THE OWNERSHIP, DEVELOPMENT AND/OR OPERATION OF PROPERTIES SIMILAR TO THE PROPERTY AND THAT BUYER PRIOR TO THE CLOSING WILL HAVE INSPECTED THE PROPERTY OR CAUSED THE PROPERTY TO BE INSPECTED TO ITS SATISFACTION AND IS QUALIFIED TO MAKE SUCH INSPECTION. BUYER ACKNOWLEDGES THAT, OTHER THAN THE EXPRESS WARRANTIES, IT IS FULLY RELYING ON BUYER'S (OR BUYER'S REPRESENTATIVES') INSPECTIONS OF THE PROPERTY AND EXCEPT FOR THE EXPRESS WARRANTIES, NOT UPON ANY STATEMENT (ORAL OR WRITTEN) WHICH MAY HAVE BEEN MADE OR MAY BE MADE (OR PURPORTEDLY MADE) BY SELLER OR ANY OF ITS REPRESENTATIVES. BUYER ACKNOWLEDGES THAT BUYER HAS (OR BUYER'S REPRESENTATIVES HAVE), OR PRIOR TO THE CLOSING WILL HAVE, THOROUGHLY INSPECTED AND EXAMINED THE PROPERTY TO THE EXTENT DEEMED NECESSARY BY BUYER IN ORDER TO ENABLE BUYER TO EVALUATE THE CONDITION OF THE PROPERTY AND ALL OTHER ASPECTS OF THE PROPERTY (INCLUDING, BUT NOT LIMITED TO, THE ENVIRONMENTAL CONDITION OF THE PROPERTY); AND BUYER ACKNOWLEDGES THAT, OTHER THAN THE EXPRESS WARRANTIES, BUYER IS RELYING SOLELY UPON ITS OWN (OR ITS REPRESENTATIVES') INSPECTION, EXAMINATION AND EVALUATION OF THE PROPERTY. ANY REPAIRS PAID FOR BY SELLER PURSUANT TO THIS AGREEMENT, IF ANY, SHALL BE DONE WITHOUT ANY WARRANTY OR REPRESENTATION BY SELLER, AND SELLER HEREBY EXPRESSLY DISCLAIMS ANY WARRANTY OR REPRESENTATION OF ANY KIND WHATSOEVER IN CONNECTION WITH SUCH REPAIRS. THE PROVISIONS OF THIS SECTION 17 SHALL BE INCLUDED IN THE DEED TO BE DELIVERED BY SELLER TO BUYER AT CLOSING.

[SIGNATURES ON NEXT PAGE]

Executed as of the dates set forth below to be effective as the Effective Date defined above.

Buyer:
Weston Urban, LLC,
a Texas Limited Liability Company

By: _____

Printed Name: Randall C. Smith

Title: Manager

Date: _____

Seller:
City of San Antonio,
a Texas Municipal Corporation

By: _____

Printed
Name: _____

Title: _____

Date: _____

Approved As To Form:

Assistant City Attorney

Exhibit A: Property Description

1.110 acre tract of land situated in the corporate limits of the city of San Antonio, Bexar County, Texas and being all that portion of New City Block 254 described in two parcels comprising a 0.450 acre tract and 0.674 acre tract as conveyed unto the City of San Antonio by general warranty deed executed December 26, 1986 and recorded in Volume 3898, Page 1325 Bexar County Real Property Records, SAVE AND EXCEPT that certain 0.0009 acre tract conveyed out of said 0.674 acre tract to the San Antonio River Authority by deed recorded in Volume 18296, Page 465, said Real Property Records and as more particularly described below:

BEGINNING at a 5/8" iron rod found on the east right-of-way line of Laredo Street (a 45.00 foot wide public ROW) at the southwest corner of said 0.674 acre tract, same being at the northwest corner of a 0.794 acre tract conveyed unto Paul B. Carter, trustee by correction deed executed April 26, 1991 and recorded in Volume 5065, Page 713 said Real Property Records, for the southwest corner and POINT OF BEGINNING of this tract.

THENCE, along the east right of way line of said Laredo Street, North 04° 30' 29" East (record bearing cited as North 04° 06' East in said deed), at 98.02 feet pass the common northwest corner of said 0.674 acre and southwest corner of 0.450 acre tracts, in all a distance of 157.23 feet to a point at the intersection with the south right-of-way line of Commerce Street (a variable width public ROW), inside the façade of a brick building for the northwest corner of this tract and from whence a drill hole found bears North 04° 30' 29" East, 3.00 feet.

THENCE, along said south right of way line and with the north line of said 0.450 acre tract, South 87° 47' 31" East, 295.00 feet to a point inside the façade of a brick building on the west bank of San Pedro Creek same being at the northeast corner of said 0.450 acre tract for the northeast corner of this tract,

THENCE, along the west bank of said San Pedro Creek, South 03° 22' 25" West, 73.30 feet to a 1/2" iron rod found at the common southeast corner of said 0.450 acre tract, the northeast corner of said 0.674 acre tract and the northeast corner of said 0.0009 acre tract,

THENCE, along the common line south line of said 0.450 acre tract and the north line of said 0.674 acre tract, North 84° 43' 28" West, 8.02 feet to the northwest corner of said 0.0009 acre tract,

THENCE, departing said common line, South 01° 00' 48" West, 49.10 feet to the southwest corner of said 0.0009 acre tract,

THENCE, South 88° 59' 12" East, 8.00 feet to a mag nail on a concrete retaining wall found on the east line of said 0.674 acre tract at the southwest corner of said 0.0009 acre tract,

THENCE, South 01° 00' 48" West, 48.59 feet to a cross "+" chiseled in the top of a rock retaining wall originally found November 16, 2009 at the common southeast corner of said 0.674 acre tract and the northeast corner of said 0.794 acre tract for the southeast corner of this tract;

THENCE, North 85° 16' 42" West, 302.13 feet (cited in deed as 301.38 feet) to the POINT OF BEGINNING.

CONTAINING in all, 1.110 acres or 48,341 square feet of land, more or less.

Exhibit B: Representations

Representations; Environmental Matters

A. Seller's Representations to Buyer

Seller represents and warrants to Buyer that the following are true and correct as of the Effective Date and will be true and correct on the Closing Date.

1. *Authority.* Seller is a Texas Municipal Corporation duly organized, validly existing, and in good standing under the laws of the state of Texas with authority to convey the Property to Buyer. This Agreement is, and all documents required by this Agreement to be executed and delivered to Buyer at closing will be, duly authorized, executed, and delivered by Seller.

2. *Litigation.* There is no litigation (or other actions, suits or proceedings, at law or in equity, or before or by any federal, state, municipal or other governmental court, department, commission, board, bureau, agency or instrumentality) pending or threatened against Seller that affects or might affect the Property or Seller's ability to perform its obligations under this Agreement.

3. *Violation of Laws.* Seller has not received or issued any notice of violation of any law, ordinance, regulation, or requirements affecting the Property or Seller's use of the Property.

4. *Licenses, Permits, and Approvals.* Seller has not received or issued any notices that any license, permit, or approval necessary to operate the Property in the manner in which it is currently operated will not be renewed on expiration or that any material condition will be imposed in order to obtain their renewal.

5. *Condemnation; Zoning; Land Use; Hazardous Materials.* Seller has not received or issued any notices of any condemnation, zoning, or land-use proceedings affecting the Property or any inquiries or notices by any governmental authority or third party with respect to the presence of hazardous materials on the Property or the migration of hazardous materials from the Property.

6. *No Other Obligation to Sell the Property or Restriction against Selling the Property.* Except for granting a security interest in the Property (which security interest shall be a Mandatory Cure Item), Seller has not obligated itself to sell the Property to any party other than Buyer. Seller's performance of this Agreement will not cause a breach of any other agreement or obligation to which Seller is a party or to which it is bound.

7. *No Liens.* On the Closing Date, (A) the Property will be free and clear of (i) all mechanic's and materialman's liens and other liens and (ii) except for the Permitted Exceptions, encumbrances of any nature, and (B) no work or materials will have been furnished to the

Property that might give rise to mechanic's, materialman's, or other liens against the Property other than work or materials to which Buyer has given its written consent.

8. *Title.* Seller presently has and will have at closing record title to the Property, and that, at closing, such title shall be free and clear of all liens, encumbrances, covenants, restrictions, rights-of-way, easements, leases and other matters affecting title, except for the Permitted Exceptions.

9. *Agreements and Leases.* There are no unrecorded agreements affecting the Property, other than those delivered to Buyer as part of the Documents. There are no leases affecting the Property. Seller will not enter into any oral or written agreements (including, without limitation, leases) affecting the Property which might become binding on Buyer or the Property at or after closing.

10. *Environmental.* Seller is not aware of any storage, production, transportation, disposal, treatment or release of any solid waste, hazardous waste, toxic substance, or any other pollutants or contaminants on or in the Property other than what has been produced previously in the Request for Proposals RFP 019-089, and Seller has complied with all applicable local, state or federal environmental laws and regulations.

11. *San Antonio River Authority.* Seller has notified Buyer that the San Antonio River Authority ("SARA") is currently using a 30,717 square foot portion of the Property for construction staging in support of the San Pedro Creek construction project, but there is no written agreement governing such use as of the Effective Date. Seller will use reasonable efforts to assist Buyer in obtaining, prior to the end of the Inspection Period, a written agreement with SARA governing such use of the Property by SARA.

The foregoing representations and warranties of Seller shall survive the closing for a period of one (1) year.

B. Buyer's Representations to Seller

Buyer represents to Seller that the following are true and correct as of the Effective Date and will be true and correct on the Closing Date.

1. *Authority.* Buyer is a duly organized, validly existing entity in good standing under the Laws of the state of Texas with authority to acquire the Property from Seller. This Agreement is, and all documents required by this Agreement to be executed and delivered to Seller at closing will be, duly authorized, executed, and delivered by Seller.

2. *Litigation.* There is no litigation pending or to Buyer's knowledge threatened against Buyer that might affect Buyer's ability to perform its obligations under this Agreement.

Exhibit C: Form of Deed

Notice of Confidentiality Rights: If you are a natural person, you may remove or strike any or all the following information from any instrument that transfers an interest in real property before it is filed for record in the public records: your social security number or your driver's license number.

The State of Texas §
 §
County of Bexar §

Deed Without Warranty

Authorizing Ordinance: City of San Antonio

Statutory Authority: Local Government Code § 272.001(a)

SP No./Parcel:

Grantor: City of San Antonio

Grantor's Mailing Address: P.O. Box 839966, San Antonio, Texas 78283-3966
(Attention: Director, Capital Improvement Management Services) (Bexar County)

Grantee: _____

Grantee's Mailing Address (including county):

Consideration: \$10 in hand paid and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged

Property: That certain tract of land totaling approximately _____ acres located in the City of San Antonio, Bexar County, Texas (the "Land"), being more particularly described by metes and bounds on Exhibit "A" attached hereto and made part hereof for all purposes, together with any and all improvements situated on the Land (the "Improvements") and all right, title and interest of

Grantor, if any, in and to appurtenances, strips or gores, roads, easements, streets, and rights-of-way bounding the Land; all utility capacity, water rights, licenses, permits, entitlements, and bonds, if any, and all other rights and benefits attributable to the Land; and all rights of ingress and egress thereto (collectively, the "Additional Interests") (except that the Additional Interests do not include, and Grantor specifically reserves, such of the following interests as Grantor may hold by virtue of being a municipality as opposed to the owner of the fee-simple interest in the Land: utility easements, drainage easements, streets, alleys, and other rights-of-way dedicated for public use). The Land, Improvements and Additional Interests are collectively referred to as the "Property".

Grantor, for the Consideration, Grants, Bargains, and Conveys to Grantee, all of Grantor's right, title, interest, and estate, both at law and in equity, as of the date hereof, in and to the Property, together with all and singular the rights and appurtenances thereto in anywise belonging, to have and to hold unto Grantee, Grantee's successors and assigns forever, **without any express or implied warranty whatsoever, including but not limited to warranties of title, condition, or character.**

Restrictions, Exceptions, And Conditions To Conveyance: This conveyance is explicitly subject only to all matters set forth on Exhibit "B" attached hereto and made a part hereof for all purposes (the "Permitted Exceptions").

GRANTEE ACKNOWLEDGES THAT GRANTOR HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATIONS AS TO THE PHYSICAL CONDITION, OR ANY OTHER MATTER AFFECTING OR RELATED TO THE PROPERTY, OTHER THAN WARRANTIES OF TITLE AS PROVIDED AND LIMITED HEREIN AND THE EXPRESS REPRESENTATIONS, WARRANTIES AND COVENANTS OF GRANTOR SET FORTH IN THAT CERTAIN REAL ESTATE SALES CONTRACT DATED _____ BY AND BETWEEN GRANTOR AND GRANTEE (COLLECTIVELY, THE "EXPRESS WARRANTIES"). GRANTEE EXPRESSLY AGREES THAT, SUBJECT TO THE EXPRESS WARRANTIES, TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE PROPERTY IS CONVEYED "AS IS" AND "WITH ALL FAULTS", AND GRANTOR EXPRESSLY DISCLAIMS, AND GRANTEE ACKNOWLEDGES AND ACCEPTS THAT, OTHER THAN THE EXPRESS WARRANTIES, GRANTOR HAS DISCLAIMED, ANY AND ALL REPRESENTATIONS, WARRANTIES OR GUARANTIES OF ANY KIND, ORAL OR WRITTEN, EXPRESS OR IMPLIED, CONCERNING THE PROPERTY, INCLUDING WITHOUT LIMITATION, THE VALUE, CONDITION, MERCHANTABILITY, HABITABILITY, MARKETABILITY, PROFITABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE, OF THE PROPERTY. OTHER THAN THE EXPRESS WARRANTIES, GRANTEE HAS NOT RELIED UPON ANY REPRESENTATION,

STATEMENT, OR OTHER COMMUNICATION FROM SELLER OR ANY AGENT OR REPRESENTATIVE OF SELLER IN PURCHASING THE PROPERTY.

SETTING OUT THE SPECIFIC RESTRICTIONS AND DISCLAIMERS DOES NOT IMPLY THAT THE PROPERTY IS FREE OF OTHER ENCUMBRANCES OR ADVERSE CLAIMS OR CONDITIONS. GRANTOR SPECIFICALLY DISCLAIMS ANY SUCH IMPLICATION.

In Witness Whereof, Grantor has caused its representative to set its hand:

Grantor:

City of San Antonio, a Texas municipal corporation

By: _____

Printed Name: _____

Title: _____

Date: _____

Draft. This is only to show the agreed form of the final document. This draft is neither ready nor suitable to be signed.

Approved as to Form:

City Attorney

THE STATE OF TEXAS §

COUNTY OF BEXAR §

This instrument was this day acknowledged before me by _____, of and for the City of San Antonio, a Texas municipal corporation, on behalf of that entity in the capacity stated.

Date: _____

Notary Public, State of Texas

My commission expires: _____

After recording, please return to:

City of San Antonio

P.O. Box 839966

San Antonio, Texas 78283-3966

(Attention: Director, Center City Development and Operations)

DRAFT

Exhibit A: Property Description

[To Be Attached]

Exhibit B: Permitted Exceptions

[To Be Attached]

DRAFT

Exhibit D: Equity Interest Agreement

EQUITY INTEREST AGREEMENT

This Equity Interest Agreement ("Agreement") is made and entered into by and between the City of San Antonio, a Texas municipal corporation ("City") acting by and through its City Manager or designee, pursuant to the Authorizing Ordinance referenced below and _____ ("Weston Urban") on the ____ day of _____, 20__ (the "Effective Date").

RECITALS

WHEREAS, Weston Urban, as purchaser, and City, as seller, are parties to that certain Real Estate Sales Contract dated _____ (the "Contract") (all capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Contract); and

WHEREAS, on the Effective Date and pursuant to the terms of the Contract, City has conveyed to Weston Urban certain real property in the City of San Antonio, Bexar County, Texas, as more particularly described in Exhibit A attached hereto (the "Property"); and

WHEREAS, Ordinance 2020-____ - ____ - ____ ("Authorizing Ordinance") authorized the sale and conveyance of the Property to Weston Urban; and

WHEREAS, pursuant to the terms of the Contract, City and Weston Urban have agreed to execute this Agreement.

AGREEMENT

1. **Definitions.** As used in this Agreement, the following words and phrases shall have the meanings set forth below.

- a. "Affiliate" of Weston Urban shall mean an individual or entity (i) that is, directly or indirectly, owned or controlled by Weston Urban, LLC, (ii) that is, directly or indirectly, under common ownership or control with Weston Urban, LLC, (iii) that directly or indirectly owns or controls Weston Urban, LLC or (iv) in which Graham Weston, directly or indirectly, has an interest.
- b. "Net Gain" shall mean the positive balance of net proceeds actually received by Weston Urban from the sale of all of the Property in a Sale to an Unrelated Party (as such phrase is defined below), less: (i) all actual third party costs incurred by Weston Urban in connection with such a sale and (ii) Weston Urban's Total Investment in the Property.

- c. "Total Investment in the Property" shall mean all total direct costs incurred by Weston Urban to acquire and own the Property, construct any improvements on the Property, and to own, market, lease, maintain, restore, manage and operate the Property.
 - d. "Unrelated Third Party" shall mean a party that is not an Affiliate of Weston Urban.
 - e. "Selection Committee Party" shall mean (A) any entity or person that was part of the selection committee for the Request for Proposal process for the sale of the Property, RFP 019-089 (each, a "Selection Committee Member" and collectively, the "Selection Committee Members"), or (B) any individual or entity that, to Weston Urban's actual knowledge (without inquiry or duty to inquire) as of the date that an agreement for the sale of the Property is executed, (i) is, directly or indirectly, owned or controlled by a Selection Committee Member, (ii) is, directly or indirectly, under common ownership or control with a Selection Committee Member or (iii) directly or indirectly owns or controls a Selection Committee Member. The City represents to Weston Urban that all of the Selection Committee Members are as follows: Lori Houston, Veronica Mendez, Paolo Sofia Fernandez, Andrew Ozuna, Matt Brown and Corrina Green. Notwithstanding the foregoing, in no event shall the City be deemed to be a Selection Committee Party.
2. **Term.** For a period of time commencing on the Effective Date and ending on the earlier to occur of (i) the date a permanent or temporary certificate of occupancy is issued for a building on the Property and (ii) the date that is five (5) years following the Effective Date (the "Term"):
- a. If Weston Urban sells all of the Property in an arms-length transaction to an Unrelated Third Party, other than to a public facilities corporation for the purposes of tax exemption (a "Sale to an Unrelated Third Party"), then subject to and upon the terms, provisions and conditions of this Agreement, the City shall be entitled to compensation ("Equity Compensation") in the following percentage of any Net Gain derived from such sale of all of the Property:

Time of Sale to an Unrelated Third Party (months after the Effective Date)	Amount of Equity Compensation Due to City

Effective Date to end of 12 th month	25%
13 th month to end of 24 th month	20%
25 th month to end of 36 th month	15%
37 th month to end of 48 th month	10%
49 th month to end of 60 th month	5%

Notwithstanding anything herein to the contrary, in no event shall the granting of a security interest in the Property in connection with any financing constitute a Sale to an Unrelated Third Party. In addition, this Agreement and all of the City's rights and interests under this Agreement (including, without limitation, the City's right to Equity Compensation) are subject and subordinate to any mortgage, deed of trust, security interest, or other similar title retention now or in the future affecting the Property ("Mortgage") granted to an Unrelated Third Party in connection with a loan covering the Property and/or the cost of any improvements to be constructed on the Property ("Mortgagee") and to all renewals, modifications, consolidations, replacements and extensions of any such Mortgage. This subordination shall be self-operative; provided, however, the City shall, within 10 days after Weston Urban's request, execute any instrument in form required by any Mortgagee in confirmation thereof. This Agreement and all of the terms, provisions and conditions set forth herein shall automatically terminate and be of no further force or effect upon the expiration of the Term (except for those that expressly survive termination).

- b. The sale of the Property to any Selection Committee Party is prohibited, unless approved by City Council.
3. **Assignment.** City's rights under this Agreement are personal to City and may not be assigned to any other party.
4. **Termination.** Upon any waiver, release or termination of this Agreement as provided herein, City shall provide to Weston Urban, within five (5) business days of Weston Urban's written request, a written release and termination of this Agreement and the Memorandum in a recordable form (the "Termination"). City appoints Weston Urban as its attorney-in-fact with full authority to execute and record the Termination on behalf of City if City does not timely provide Weston Urban the executed Termination. This provision shall survive the termination of this Agreement.
5. **Memorandum of Equity Interest Agreement.** This Agreement shall not be recorded; however, this Agreement shall be memorialized on the Effective Date by the recordation of a Memorandum of Equity Interest Agreement (the "Memorandum") in the form reasonably agreed upon between Weston Urban and City.
6. **Notice.** Any notices required in this Agreement must be in writing and shall be deemed to have been delivered if:

(a) delivered in person to the address designated below;

(b) placed in the United States mail with postage prepaid, return receipt requested, properly addressed to the designated address; or

(c) deposited, with fees prepaid, into the custody of a nationally recognized overnight delivery service such as FedEx, for delivery to the designated address.

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. Either Party may designate different or additional addresses by giving the other Party no less than ten (10) calendar days advance written notice.

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 by delivery, to:

Director of Center CITY Development Office
CITY Clerk
CITY of San Antonio
100 Military Plaza
San Antonio, TX 78205

If intended for Weston Urban, to:

112 East Pecan St., Suite 175,
San Antonio, TX 78205
Attn: Randy Smith

With a copy to:

Golden Steves & Gordon, LLP
Attn: Riley W. Vanham
200 E. Basse Road, Suite 200,
San Antonio, TX 78209

7. The Charter of the City of San Antonio and the City of San Antonio Code of Ethics prohibit a City officer or employee, as those terms are defined in §2-52 of the Code of Ethics, from having a direct or indirect financial interest in any contract with the City. An officer or employee has a prohibited "financial interest" in a contract with the City or in the sale to City of land, materials, supplies, or service, if any of the following individuals or entities is a party to the contract or sale:

- a. A City officer or employee, his or her spouse, sibling, parent, child, or other family member within the first degree of consanguinity or affinity;
- b. An entity in which the officer or employee, or his or her parent, child, or spouse directly or indirectly owns (i) 10% or more of the voting stock or shares of the entity, or (ii) 10% or more of the fair market value of the entity; or
- c. An entity in which any individual or entity listed above is (i) a subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary entity.

Weston Urban warrants and certifies, and this Agreement is made in reliance thereon, that:

- a. none of the above listed individuals or entities is a party to this Agreement; and
 - b. Weston Urban has tendered to City a Discretionary Contracts Disclosure Statement in compliance with the City of San Antonio Code of Ethics.
8. **Third Party Beneficiaries.** This Agreement is intended for the benefit of the parties hereto and their successors and permitted assigns only. There are no third party beneficiaries hereof.
9. **Pronouns.** In construing this Agreement, plural constructions include the singular, and singular constructions include the plural. No significance attaches to whether a pronoun is masculine, feminine, or neuter. The words "herein," "hereof," and other, similar compounds of the word "here" refer to this entire Agreement, not to any particular provision of it.
10. **Captions.** Paragraph captions in this Agreement are for ease of reference only and do not affect the interpretation hereof.
11. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which is an original, whether or not all parties sign the same document. Regardless of the number of counterparts, they constitute only one agreement. In making proof of this Agreement, one need not produce or account for more counterparts than necessary to show execution by or on behalf of all parties.
12. **Further Assurances.** The parties must execute and deliver such additional documents and instruments as may be reasonably required to effect fully the provisions hereof. No

such additional document(s), however, shall alter the rights or obligations of the parties as contained in this Agreement.

13. **Ambiguities Not to Be Construed against Party Who Drafted Contract.** The rule of construction that ambiguities in a document will be construed against the party who drafted it will not be applied in interpreting this Agreement.
14. **No Special Relationship.** The parties' relationship is an ordinary commercial relationship, and they do not intend to create the relationship of principal and agent, partnership, joint venture, or any other special relationship.
15. **Waiver of Consumer Rights.** Buyer waives its rights under the Texas Deceptive Trade Practices-Consumer Protection Act, Section 17.41 et seq. of the Texas Business and Commerce Code, a law that gives consumers special rights and protections. After consultation with an attorney of its own selection, Buyer voluntarily consents to this waiver.
16. **Incorporation by Reference.** All exhibits to this Agreement are incorporated into it by reference for all purposes as if fully set forth.
17. **Public Information.** Buyer acknowledges that this instrument is 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 waives an otherwise applicable exception to disclosure.
18. **Attorneys' Fees.** If either party retains an attorney to enforce this Agreement, the prevailing party is entitled to recover reasonable attorneys' fees and court and other costs.
19. **Entire Agreement; Amendment.** This Agreement, with its attachments, constitute the entire agreement of the parties concerning the subject matter of this Agreement (including, without limitation, the City's Equity Compensation), and there are no oral representations, warranties, agreements, or promises pertaining to the subject matter of this Agreement (including, without limitation, the City's Equity Compensation) not incorporated in writing in the Agreement. This Agreement may be amended only by an instrument in writing signed by both parties.

[Signatures are on Next Page]

_____,

a _____

By: _____

Printed Name: _____

Title: _____

Date: _____

City of San Antonio,
a Texas Municipal Corporation

By: _____

Printed Name: _____

Title: _____

Date: _____

Approved As To Form:

Assistant City Attorney

Exhibit E: Notices

The following notices, statements, and certificates are attached for delivery to Buyer, and Buyer acknowledges receipt of the notices, statements, and certificates by executing this Agreement:

Phase I Environmental Site Assessment. Provided as part of the City's Request for Proposal's process.

Asbestos. Pursuant to 29 C.F.R. § 1926.1101(n)(6), federal asbestos regulations require Seller to transfer to successive owners written records of any notifications communicated or received concerning the identification, location and quantity of asbestos or presumed asbestos containing materials.

Abstract or Title Policy. The Texas Real Estate License Act requires a real estate agent to advise Buyer that he should have an attorney examine an abstract of title to the Property being purchased; or a title insurance Policy should be obtained. Notice to that effect is, therefore, hereby given to Buyer.

Notice Regarding Unimproved Property Located in a Certificated Service Area. If the Property is unimproved and is located in a certificated service area of a utility service, then Seller shall give to Buyer a written notice in compliance with §13.257 of the Texas Water Code, and Buyer agrees to acknowledge receipt of the notice in writing. The notice must set forth the correct name of utility service provider authorized by law to provide water or sewer service to the Property, and must comply with all other applicable requirements of the Texas Water Code.

Special Assessment Districts. If the Property is situated within a utility district or flood control district subject to the provisions of §49.452 of the Texas Water Code, then Seller shall give to Buyer the required written notice and Buyer agrees to acknowledge receipt of the notice in writing. The notice must set forth the current tax rate, the current bonded indebtedness and the authorized indebtedness of the district, and must comply with all other applicable requirements of the Texas Water Code.

Notice Regarding Possible Annexation. If the Property that is the subject of this Agreement is located outside the limits of a municipality, the Property may now or later be included in the extraterritorial jurisdiction of the municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that

depicts its boundaries and extraterritorial jurisdiction. To determine if the Property is located within a municipality's extraterritorial jurisdiction or is likely to be located within a municipality's extraterritorial jurisdiction, contact all municipalities located in the general proximity of the Property for further information.

Exhibit F: Access Conditions

1. Feasibility Studies and Inspections.

(a) Commencing on the Effective Date of the Agreement and continuing until the earlier to occur of (i) termination of the Agreement, or (ii) the Closing under the Agreement (the "***Access Period***"), Buyer, subject to the limitations below, and its representatives and agents shall have the right to access the Property at reasonable times in order to conduct engineering studies, environmental studies, soil tests, and any other inspections and/or tests that Buyer may deem necessary or advisable, all at Buyer's sole risk, costs and expense. Buyer will not conduct any intrusive inspections or invasive tests without obtaining Seller's prior written consent, which will not be unreasonably withheld, conditioned or delayed. For the purposes herein, the phrases "intrusive inspections" and "invasive tests" shall refer to tests and inspections which result in more than de minimus levels of damage to or immaterial disturbance of the surface of the real property or any portion of the improvements located thereon. For purposes hereof, Buyer and Seller agree that a "Phase I Environmental Site Assessment" shall not be an intrusive test that will require Seller's prior written consent, provided that the consultant only engages in a visual assessment of the Property for signs of possible contamination, and that non-intrusive geotechnical studies or inspections will not require Seller's prior written consent. Any testing or activities associated with a Phase II Environmental Site Assessment shall require Seller's prior written consent, which will not be unreasonably withheld, conditioned or delayed.

(b) Prior to entering the Property at any time, Buyer must provide Seller with at least 24 hours prior notice (which may be given via telephone or electronic mail). Seller shall have a right to have one of its agents accompany Buyer during any activities performed by Buyer on the Property.

(c) Buyer shall provide Seller with copies of all non-confidential third-party inspections and reports at Seller's request, provided that such inspections and reports shall be delivered to Seller on an AS-IS, WITH ALL FAULTS basis, and Buyer makes no representations or warranties whatsoever (express or implied) as to the content or accuracy of same.

2. Buyer's Responsibilities. In conducting any inspections, tests, investigations or studies of the Property, Buyer and its agents and representatives shall (i) not injure or otherwise cause bodily harm to Seller, or its agents, guests, invitees, contractors and employees; (ii) comply with all applicable laws; (iii) not permit any liens to attach to the Property by reason of the exercise of its rights hereunder; and (iv) if closing does not occur, promptly repair any damage to the Property (including the subsurface thereof) resulting solely and directly from the entry by Buyer or its agents, employees, contractors and representatives or from any such inspections, tests, investigations or studies by Buyer or its agents, and upon completion of any such activity, restore the Property to substantially the condition, or better than the condition, it was in prior to Buyer undertaking the activity. Buyer shall keep the Property free from any mechanics' liens, vendors liens or any other liens arising out of any work performed, materials furnished or obligations incurred by Buyer, and Buyer agrees to defend, indemnify and hold

Seller harmless from and against all actual damages incurred by Seller in connection with any such lien or claim or action for liens, together with costs of suit and reasonable attorneys' fees incurred by Seller in connection therewith, SUBJECT TO ANY LIMITATIONS UNDER THE CONSTITUTION OF THE STATE OF TEXAS, BUT TO THE MAXIMUM EXTENT PERMITTED BY LAW.

3. Release and Indemnity.

(a) Buyer hereby releases Seller from all claims by Buyer or its agents, contractors, employees, or invitees arising out of the entry of Buyer, its agents, contractors, employees, or invitees entry upon the Property or any inspection and/or test performed by Buyer on the Property, except to the extent caused by the gross negligence or willful misconduct of Seller or its agents, guests, invitees, contractors or employees.

(b) SUBJECT TO ANY LIMITATIONS UNDER THE CONSTITUTION OF THE STATE OF TEXAS, BUT TO THE MAXIMUM EXTENT PERMITTED BY LAW and except for matters caused by Seller's (and/or its agents' and representatives') gross negligence or willful misconduct, Buyer hereby indemnifies, defends and holds Seller and its shareholders, officers, directors, agents, employees and representatives harmless from and against any and all claims, causes of action, losses, costs, liabilities and/or damages (including, but not limited to, Seller's reasonable attorney's fees) related to (i) injury to person or damage to property or (ii) mechanic's and materialmen's liens, in each event arising solely out of the entry of Buyer, its agents, contractors, employees, or invitees entry upon the Property or any inspection and/or test performed by Buyer on the Property; provided, however, that the foregoing indemnification shall not apply to any pre-existing conditions at the Property.

4. Confidentiality. Subject to the requirements of Chapter 552 of the Texas Government Code, all information (other than matters of public record or matters generally known to the public) relating to the Property that is furnished to Buyer by Seller, or obtained through inspection of the Property (the "**Confidential Information**") by Buyer or provided to Buyer by its affiliates, lenders, potential lenders, partners, potential partners, investors, potential investors, employees, tenants, partners, attorneys, accountants and other professionals or agents (Buyer and such other parties referred to herein as the "**Buyer Parties**"), will be treated by the Buyer Parties as confidential, and will not be disclosed to anyone except to Buyer Parties who agree to maintain the confidentiality of such information, and will be returned to Seller by Buyer in accordance with Section 5 below. The parties agree that the Confidential Information shall not include any information that (i) is already known to Buyer or a Buyer Party without obligation of confidentiality; (ii) is or becomes publicly known through no wrongful act by Buyer or a Buyer Party; (iii) is approved for release by Seller by written authorization from Seller; or (iv) is required to be disclosed by law or by regulatory or judicial process. The confidentiality provisions of this Section 4 shall not apply to any disclosures made by Seller or any of its affiliates or the Buyer Parties as and to the extent required by law, by court order, or in connection with any subpoena served upon such person; provided Buyer or Seller, as applicable, shall provide the other with written notice before making any such disclosure. The terms and

provisions of this Section 4 shall survive the termination of this Agreement for a period of one (1) year.

5. Return and Disclosure of Materials. In the event of a termination of this Agreement, Buyer shall promptly return all materials and information, if any, given to it by Seller or Seller's consultants during pendency of this Agreement. In addition, in the event of a termination of this Agreement, at Seller's request, Buyer shall promptly deliver to Seller (at no cost to Seller), on an AS-IS, WITH ALL FAULTS BASIS and without any representation or warranty whatsoever (express or implied) as to their accuracy or completeness, all non-confidential reports, appraisals, plans, studies, documents, written information and the like related to the physical condition of the Property which has been generated by Buyer's third party consultants during the pendency of this Agreement in connection with Buyer's inspection of the Property.

6. Buyer Insurance Requirements. Before any entry onto the Property, Buyer or Buyer's agent performing such inspections shall provide Seller with a certificate of insurance naming Seller as an additional insured evidencing that Buyer has in place commercial general liability insurance (with policy limits of at least \$2,000,000), auto liability insurance (owned and hired) (with policy limits of at least \$1,000,000), workers' compensation insurance (with policy limits required by applicable statute) and employers liability insurance (accident and disease) (with policy limits of at least \$1,000,000).