

**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. Upon payment by Developer of approved costs, Developer must submit to the Houston Street TIRZ #9 and Westside TIRZ #30 documentation of such approved costs paid in accordance with TIRZ processes, whereupon the Houston Street TIRZ #9 and Westside TIRZ #30 board will issue reimbursements to the DEVELOPER within 30 days of submission and board verification.

#### ARTICLE 5 FEE WAIVERS

In addition to the Infrastructure Grant, CITY is providing DEVELOPER with City fee waivers 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. Upon payment by Developer of approved City fees, Developer must submit to the Houston Street TIRZ #9 documentation of such fees paid in accordance with TIRZ processes, whereupon the Houston Street TIRZ #9 will issue reimbursement to the DEVELOPER within 30 days of submission and board verification.

## 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.

<u>If intended for CITY, to:</u>	City of San Antonio Attn: Director Center City Development & Operations Dept. P.O. Box 839966 San Antonio, TX 78283-3966
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<u>If intended for DEVELOPER, to:</u>	Weston Urban, LLC Attn: Randy Smith 112 East Pecan St., Suite 175 San Antonio, TX 78205
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#### **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-\_\_\_\_\_, dated \_\_\_\_\_, and Weston Urban, LLC pursuant to the authority of its \_\_\_\_\_.

**Weston Urban, LLC,**  
a Texas limited liability company

By: 

Printed Name: Randal C. Smith

Title: Manager

Date: June 3, 2020

**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:

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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.