

STATE OF TEXAS

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**CITY OF SAN ANTONIO  
TAX ABATEMENT AGREEMENT  
FOR REAL AND PERSONAL PROPERTY**

COUNTY OF BEXAR

**1. PARTIES**

THIS AGREEMENT (the "Agreement") is entered into on this \_\_\_ day of \_\_\_\_\_ 2012, by and between Rocky Creek Partners, L.L.C. (hereinafter referred to as "DEVELOPER"), holding a fee-simple ownership interest in the real property described herein, and the CITY of SAN ANTONIO, a municipal corporation, (hereinafter referred to as the "CITY"), acting by and through its City Manager under the authority of its City Council.

**2. AUTHORIZATION AND FINDINGS**

A. This Agreement is entered into pursuant to the following authorities:

1. The Texas Property Redevelopment and Tax Abatement Act of 1987, V.A.T.S. Tax Code, Chapter 312, as amended;
2. CITY COUNCIL RESOLUTION No. 89-07-12, dated the 15th day of February 1989, and most recently revised by Ordinance No. 2010-12-16-1105 on December 16, 2010, together which established the City of San Antonio Guidelines and Criteria for Tax Phase-In and Reinvestment Zones, (hereinafter referred to as the "Guidelines and Criteria");
3. Texas Government Code Title 10, Subtitle G, Chapter 2303, Subchapter C, which provides for the designation of State Enterprise Zones and Texas Tax Code Title 3, Subtitle B, Chapter 312, Section 312.2011 which provides for the automatic designation of an area in an Enterprise Zone as a Reinvestment Zone in accordance with Chapter 312 of the Tax Code; and
4. CITY COUNCIL ORDINANCE NO. 2011-12-15-\_\_\_\_\_, dated December 15, 2011, which specifically approved this Agreement and authorized execution hereof.

B. The City Council, by its approval of this Agreement, hereby finds that the terms of this Agreement abide by the Guidelines and Criteria and approving this Agreement will not have any substantial long-term adverse effect on the provision of city services or the City's tax base and the planned use of the Property (defined below) by DEVELOPER for the uses contemplated herein will not constitute a hazard to public safety, health or morals.

3. **PROPERTY**

A. DEVELOPER has a fee-simple ownership interest in real property located at 1010 S. Flores St., San Antonio, Texas 78204 (the "Property"), legally described as Lot 11, Block 4, NCB 2972 in "Exhibit A", attached hereto and incorporated herein. The Property lies within a State-designated Enterprise Zone and thereby qualifies as a Reinvestment Zone for the purposes of the Texas Property Redevelopment and Tax Abatement Act of 1987, V.A.T.S. Tax Code, Chapter 312. For the purposes of this Agreement, "Property" shall also have the meaning of the phrase "Reinvestment Zone," as it is defined within Chapter 312 of the Texas Tax Code.

B. DEVELOPER is constructing on the Property a market-rate housing project (the "Facility") and upon its completion shall operate within the Facility a 56-unit market-rate, rental housing development (the "Business Activities") for the term of this Agreement.

C. DEVELOPER is investing approximately SEVEN MILLION FOUR HUNDRED FIFTY THREE THOUSAND TWO HUNDRED AND ONE DOLLARS (\$7,453,201.00) in real property improvements and approximately FOUR HUNDRED TWO THOUSAND FOUR HUNDRED NINETY DOLLARS (\$402,490.00) of public improvements (together, the "Improvements") to the Property for the purpose of increasing the number of market-rate, rental housing units in the downtown area of the City of San Antonio. The Facility Improvements shall include the construction of a 48,369 sq. foot building that will contain fifty six (56) housing units, public improvements to include, without limitation, water main, curbs, sidewalks, street lighting, utility relocation and landscaping, and surface parking consisting of 66 internal and 22 street-side parking spaces shall be constructed on the Property.

D. DEVELOPER shall establish a separate tax account for the Improvements with the Bexar Appraisal District and provide these tax account numbers to the CITY.

E. A copy of the Ordinance authorizing this Agreement shall be filed/recorded with the Bexar County Property Records by the City of San Antonio; DEVELOPER shall be responsible for the payment of fees associated with this recording.

4. **DEVELOPER'S REPRESENTATIONS**

A. DEVELOPER represents that they have no knowledge that any interest in the Property is presently owned, held or leased by a member of the San Antonio City Council, Zoning Commission, Planning Commission, the City's Center City Development Office, or any other City officer or employee. DEVELOPER further represents that they shall not knowingly sell, lease or otherwise convey such an interest to a member of the San Antonio City Council, the Zoning Commission, the Planning Commission, the City's Center City Development Office or any other City officer or employee, as long as this Agreement remains in effect.

B. DEVELOPER represents that there is no litigation pending against DEVELOPER for any violations under the Occupational Safety and Health Act (“OSHA”).

**5. OBLIGATIONS OF DEVELOPER**

A. In addition to, and independent of, all other obligations and/or duties imposed on DEVELOPER by any other incentive agreements it has entered into with the State of Texas, Bexar County and/or the City of San Antonio, DEVELOPER shall:

- 1) own, hold an interest in or otherwise control the Property and the Improvements that are the subject of this Agreement; and
- 2) invest, or cause to be invested, approximately SEVEN MILLION FOUR HUNDRED FIFTY THREE THOUSAND TWO HUNDRED AND ONE DOLLARS (\$7,453,201.00) in Improvements for the Property by April 1, 2013; and
- (3) shall control and use the Property for its Business Activities; and
- (4) shall comply with all other applicable terms of this Agreement.

B. DEVELOPER also covenants and agrees that it shall conduct its Business Activities (as defined in Article 3, Paragraph B) on the Property in accordance with all applicable federal, state and local laws.

C. DEVELOPER shall construct, or cause to be constructed, Real Property Improvements to the Property in accordance with all applicable federal, state and local laws including, but not limited to, Texas Commission on Environmental Quality regulations, Bexar County and City of San Antonio laws, Building Codes and Ordinances, Historic Preservation and Urban Design Ordinances, flood, subdivision, building, electrical, plumbing, fire and life safety codes and regulations, current and as amended.

D. Except as provided herein, DEVELOPER covenants and agrees that it shall use the Property only to conduct its Business Activities. Without additional consent or approval by the City Council, a parent, subsidiary or affiliate organization of DEVELOPER or new entity created as a result of a merger or other corporate restructure or reorganization of DEVELOPER, or any component thereof (hereinafter “Related Organization”) may occupy and use the Property for such Related Organization’s normal business activities, so long as such business activities are those of a market-rate rental housing development. To be eligible for the tax abatement as provided in this Agreement, such Related Organization must agree in writing to fully comply with all applicable terms of this Agreement. Except as authorized above, DEVELOPER covenants and agrees not to change the principal use of the Property without prior approval by the City Council, as evidenced in a duly-approved ordinance.

E. DEVELOPER covenants and agrees that they shall maintain the Property and any constructed improvements in good repair and condition during the Term and Recapture Period of this Agreement, normal wear and tear and damage by fire or other casualty not caused as a result of the negligence, intentional act or misconduct of DEVELOPER excepted. Compliance with the maintenance obligations imposed herein shall be presumed if DEVELOPER follows its normal and customary maintenance procedures and schedules.

F. Upon five business days prior notice to DEVELOPER by CITY, DEVELOPER covenants and agrees that they shall allow designated representatives of the CITY access to the Property during normal business hours for inspection to determine if the terms and conditions of this Agreement are being met. This inspection is independent of CITY'S police powers to inspect for purposes of assuring compliance with applicable City Codes and Ordinances. The CITY's access to DEVELOPER's books and records will be limited to information needed to verify that DEVELOPER is and has been conducting Business Activities, and to verify the number of full-time employees at the Facility. Any information that is not required by law to be made public shall be kept confidential by CITY. 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. CITY representatives may be accompanied by DEVELOPER representatives and such inspections shall be conducted in such a manner as to (a) not unreasonably interfere with the operation of the Property or the Facility; and (b) comply with DEVELOPER's reasonable security requirements.

G. During the term of this Agreement, DEVELOPER covenants and agrees to furnish each year, as applicable, the Chief Appraiser of Bexar Appraisal District with information outlined in Chapter 22, V.A.T.S. Tax Code, as amended, as may be necessary for the tax abatement and for appraisal purposes.

H. DEVELOPER covenants and agrees to notify CITY in writing at least 30 days prior to any sale, transfer or sub-lease of the Property during the Term. CITY shall not unreasonably withhold approval of any requests for Assignment of this Agreement by DEVELOPER under Article 11 and any new purchaser or transferee requesting Assignment shall be bound by same. Failure to provide the required notification under this Article 5, Paragraph H may render DEVELOPER subject to the termination and recapture provisions under Article 7 without benefit of the Cure Period (as defined in Article 7, Paragraph D).

I. DEVELOPER covenants and agrees to notify CITY in writing at least 30 days prior to Relocating or Ceasing its Business Activities (as defined in Article 7, Paragraphs B and C). Failure to provide the required notification under this Article 5, Paragraph I may render DEVELOPER subject to the termination and recapture provisions under Article 7 without benefit of the Cure Period (as defined in Article 7, Paragraph D).

J. If, during this Agreement, DEVELOPER allows its ad valorem taxes due on the land, real and/or personal property, inventory and supplies to become delinquent and fails to timely and properly follow the legal procedures for their protest and/or contest, or is in default with any loan which has been made by the San Antonio Development Agency, City of San Antonio Industrial Development Authority or any other CITY-sponsored loan/grant/bond program, or is in default with any other agreements wherein the City of San Antonio is a named party, then the termination and recapture provisions of Article 7 of this Agreement shall apply.

## 6. TAX ABATEMENT

A. The Tax Abatement period (the “*Term*”) for the Real Property Improvements shall be ten (10) years beginning on January 1, 2013.

- i. The “*Base Year*” for calculating the value of Real Property and Real Property Improvements existing and located upon the Property prior to the effective date of this Agreement shall be based on January 1, 2012.
- ii. The “*Base Year Value*” of the Real Property Improvements shall be the assessed value (determined by the Bexar County Appraisal District) of the Real Property Improvements as of the Base Year determined in accordance with Article 6(A)(i) above.

B. Recapture Period. Following the Tax Abatement Term, a period shall follow, known as the “*Recapture Period*”, during which the CITY may recapture previously-abated ad valorem taxes in the event of default of Agreement terms by DEVELOPER.

C. At the commencement of the Term, DEVELOPER shall own, have an interest in or otherwise control the Property and shall be conducting its Business Activities on a daily basis.

D. Provided that DEVELOPER has invested a minimum of SEVEN MILLION FOUR HUNDRED FIFTY THREE THOUSAND TWO HUNDRED AND ONE DOLLARS (\$7,453,201.00) in real property improvements and a minimum of FOUR HUNDRED TWO THOUSAND FOUR HUNDRED NINETY DOLLARS (\$402,490.00) in public improvements (together, the “Improvements”), and constructed no less than eighty percent (80%) of the housing units as described in Article 3, Paragraph C of this Agreement by December 31, 2012, DEVELOPER uses the Property for its Business Activities, and DEVELOPER is otherwise in compliance with the conditions of this Agreement, then ONE HUNDRED PERCENT (100%) of the ad valorem taxes for the Improvements above the Base Year Value, shall be abated for the ten year Term of this Agreement. There shall be no abatement of taxes for the underlying land value, personal property, inventory or supplies.

E. DEVELOPER acknowledges and agrees that the Base Year Value of the Property and the tax levy based on said Base Year Value of the Property in the Zone shall not decrease, but taxes may increase and that the amount of property taxes paid by

DEVELOPER to the CITY attributable to the Property during the Term shall not be less than the amount of taxes attributable to the Property paid to the CITY for the base year tax year, if any, except in the event of casualty or condemnation of the Property in the Zone.

F. DEVELOPER shall have the right to protest appraisals of the Property, real or personal, or any portion thereof, over and above the Base Year Value as applicable.

## 7. **DEFAULT/TERMINATION/RECAPTURE**

A. For purposes of this section, "Relocation" or "Relocate" shall mean DEVELOPER or a Related Organization which has taken the place of DEVELOPER, transferring Business Activities to a location outside the Zone.

B. Should DEVELOPER occupy and use the Property for its Business Activities and subsequently Relocates (as defined in this Article 7, Paragraph A) during the Term, unless such Relocation is caused by a Force Majeure, as defined in Article 8, then CITY shall have the right to terminate this Agreement. Said termination shall be effective for the calendar year during which the Relocation occurred. Unless DEVELOPER presents credible evidence to clearly indicate a date of Relocation, CITY's determination shall be final and conclusive.

Upon termination, any and all taxes otherwise abated for that calendar year and all previously abated taxes under this Agreement shall be recaptured by CITY in the percentage set out in Article 7, Paragraph G and CITY shall be entitled to the payment of such recaptured taxes within sixty (60) calendar days from the date it notifies DEVELOPER in writing of termination.

C. If DEVELOPER occupies and uses the Property for its Business Activities and subsequently ceases conducting Business Activities (or a substantial portion thereof) at the site for a continuous period of three (3) months during the Term of this Agreement for any reason, except if such cessation is caused by a Force Majeure as defined in Article 8, then the CITY shall have the right to terminate this Agreement. Said terminations shall be effective for the calendar year during which the Property was no longer used for the required purposes stated herein. Unless DEVELOPER presents credible evidence to clearly indicate a date of cessation, CITY's determination of a date of cessation shall be final and conclusive.

Upon termination, any and all taxes otherwise abated for that calendar year and all previously abated taxes under this Agreement shall be recaptured by CITY in the percentage set out in Article 7, Paragraph G and CITY shall be entitled to the payment of such recaptured taxes within sixty (60) calendar days from the date it notifies DEVELOPER in writing of termination.

D. During the Term, CITY may declare a default if DEVELOPER fails to comply with any of the terms of this Agreement. Should CITY determine DEVELOPER is in

default under any of the terms of this Agreement, CITY will notify DEVELOPER in writing at the address below in Article 9. In the case of default for causes that cannot with due diligence be cured within such sixty (60) day period, the 60-day cure period may be extended at CITY's sole discretion for such additional time as may be reasonable under the circumstances; provided that DEVELOPER shall: (1) immediately upon receipt of such notice 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. If said default is not cured within sixty (60) calendar days from the date of such notice, or within the "additional time period" provided for in the immediately preceding sentence, (hereinafter collectively referred to as the "***Cure Period***"), then CITY shall have the right to terminate this Agreement. CITY may, in its sole discretion, extend the Cure Period if DEVELOPER commences the cure within the Cure Period and DEVELOPER is diligently pursuing such cure. If the Agreement is terminated as a result of default, all taxes abated shall be due for the tax year during which the termination occurred and shall accrue without further abatements for all tax years thereafter; in addition, CITY shall have the right to recapture from DEVELOPER all previously-abated property taxes under this Agreement and said taxes shall be paid by DEVELOPER within sixty (60) calendar days of receiving CITY'S written notification of recapture.

E. Other Remedies Available. CITY shall have the right to seek any remedy at law to which it may be entitled, in addition to termination and/or recapture, if DEVELOPER defaults under the terms of this Agreement. However, such termination and/or recapture shall be subject to any and all lawful offsets, settlements, deductions or credits to which DEVELOPER may be entitled. The termination and/or recapture of taxes provided in this Article 7 are not applicable to situations involving minor changes to the description of the Property, or changes in ownership or in management thereof, so long as DEVELOPER, its parent, subsidiary, affiliate or its CITY-approved successor or assignee continues conducting Business Activities or other authorized activities thereon as provided hereinabove.

G. Calculation of Taxes Subject to Recapture. Except as expressly provided herein, if DEVELOPER fails to comply with any of the terms of this Agreement including, but not limited to, those pertaining to this Article 7, then the City Council shall have the right to recapture from DEVELOPER a percentage of the abated personal property taxes based on the following table:

TERM YEAR	TOTAL PREVIOUSLY-ABATED TAX SHALL BE MULTIPLIED BY:
1-10	100%
11-12	80%
13	60%
14	40%
15	20%
16	10%

FORMULA: The *Recapture Formula* shall be:

$$\begin{array}{rcccl} & & \text{Applicable Percentage} & & \text{Amount to be} \\ \text{Total Taxes Abated} & \times & \text{from above Schedule} & = & \text{Recaptured} \end{array}$$

CITY shall recalculate the amount of recapture pertaining to each tax year utilizing the above formula. A bill for each year will then be sent to DEVELOPER.

**8. AUTHORIZED RELIEF FROM PERFORMANCE (Force Majeure)**

For purposes of this section, “Force Majeure” is defined as an act of God or natural disaster. It also includes explosion or other casualty or accident which is not the result of negligence, intentional act or misconduct on the part of DEVELOPER. In addition to relief expressly granted in this Agreement, CITY may grant relief from performance of this Agreement if DEVELOPER is prevented from compliance and performance by an event of Force Majeure. The burden of proof for the need for such relief shall rest upon DEVELOPER. To obtain release based upon this Article 8, DEVELOPER must file a written request with the CITY’S Center City Development Office for processing to City Council for a decision, authorized by a duly approved Ordinance.

**9. 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 upon its deposit into the custody of the United States Postal Service or 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.

TO DEVELOPER:

- (Whether personally delivered or mailed):

Rocky Creek Partners, LLC  
Attn: Guillermo Nicolas.  
300 S. Flores St.  
San Antonio, TX 78204

WITH A COPY TO:

Landbridge Partners, LLC  
Attn: S. Sunshine Thacker  
70 N.E. Loop 410, Ste: 570  
San Antonio, TX 78216  
TO CITY:

- (If mailed):

Center City Development Office  
Attn: Director  
P.O. Box 839966  
San Antonio, TX 78283-3966

- (If by personal or overnight delivery):

Center City Development Office  
Attn: Director  
Frost Bank Building  
100 W. Houston Street, Ste. 1900  
San Antonio, TX 78205

10. **CONDITION**

This Agreement is conditioned entirely upon the approval of the San Antonio City Council, as evidenced by duly approved Ordinance Number 2011-12-15-\_\_\_\_\_, dated December 15, 2011.

11. **ASSIGNMENT**

Except as otherwise expressly provided herein, this Agreement may be assigned or otherwise transferred to a non-Related Organization, as defined in Article 5(H), only with City Council's prior approval (which approval shall not be unreasonably withheld), as reflected in a duly-adopted ordinance. DEVELOPER must submit a written request to CITY for approval of the proposed assignment or other transfer at least thirty (30) days prior to the effective date of the assignment or transfer of any part of the Property; however, no City Council consent is required for an assignment or transfer to a parent of DEVELOPER, a subsidiary of DEVELOPER, an affiliate entity of DEVELOPER, or to any new entity created as a result of a merger, or other corporate restructure or reorganization of DEVELOPER. However, DEVELOPER shall give CITY prior written notice of all assignments or other transfers that do not require City Council consent, as required under Article 5, Paragraph H. All future assignees shall be bound by all terms and/or provisions and representations of this Agreement.

Further, DEVELOPER may also assign this Agreement, with CITY'S written consent as evidenced through an authorized City Ordinance, to a mortgagee or lender providing financing to DEVELOPER with respect to the Property, the Facilities and or the Business Activities in the event such mortgagor or lender exercises its foreclosure right against DEVELOPER. Such assignment shall be contingent upon the mortgagor or lender agreeing in writing to the terms and conditions of this Agreement.

**12. GENERAL PROVISIONS**

A. None of the Property Improvements described in this Agreement are financed by tax increment bonds.

B. This Agreement is entered into subject to the rights of the holders of outstanding bonds of the CITY related to this project. No bonds for which the CITY is liable have been used to finance this project.

C. No amendment, modification, or alteration of the terms hereof shall be binding unless in writing dated subsequent to the date of this Agreement and duly authorized by the Parties. DEVELOPER acknowledges that City Council approval is required for any and all of these actions.

**13. SEVERABILITY**

In the event any section, subsection, paragraph, subparagraph, sentence, phrase or work herein is held invalid, illegal or unenforceable, the balance of this Agreement shall stand, shall be enforceable and shall be read as if the Parties intended at all times to delete said invalid section, subsection, paragraph, subparagraph, sentence, phrase or word. In such event there shall be substituted for such deleted provisions a provision as similar as possible in terms and in effect to such deleted provision that is valid, legal and enforceable. Along with the "Economic Development Grant Agreement of the City of San Antonio" entered into between the CITY and the DEVELOPER, this Agreement constitutes the entire Agreement between the Parties hereto relating to the subject matter contained herein and supersedes all prior, oral or written agreements, commitments or understandings with respect to the matters provided for herein.

**14. ESTOPPEL CERTIFICATE**

Any Party hereto may request an estoppel certificate related to this project (hereafter referred to as "Certificate") from another Party hereto so long as the Certificate is requested in connection with a bona fide business purpose. The Certificate, which if requested, will be addressed to a subsequent purchaser or assignee of DEVELOPER or other party designated by DEVELOPER which shall include, but not necessarily be limited to, statements that this Agreement is in full force and effect without default, if such is the case, the remaining Term of this Agreement, the levels of tax abatement in effect, and such other matters reasonably requested by the party(ies) to receive the Certificate.

15. **OWNER STANDING**

DEVELOPER, as a Party to this Agreement, shall be deemed a proper and necessary party in any litigation questioning or challenging the validity of this Agreement or any of the underlying ordinances, resolutions, or City Council actions authorizing same, and DEVELOPER shall be entitled to intervene in said litigation.

16. **APPLICABLE LAW**

This Agreement shall be construed under the laws of the State of Texas and is performable in Bexar County, Texas, the location of the ZONE.

17. **TRIPPLICATE ORIGINALS**

This Agreement shall be executed in triplicate originals, with an original going to each Party and one being filed with the City Clerk.

**EXECUTED and AGREED** to this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

**CITY OF SAN ANTONIO,**  
a Texas Municipal Corporation

**ROCKY CREEK PARTNERS, L.L.C.**  
a Texas Limited Liability Corporation

\_\_\_\_\_  
Pat DiGiovanni  
DEPUTY CITY MANAGER

  
\_\_\_\_\_  
Guillermo Nicolas  
MANAGER

ATTEST:

ATTEST (if necessary):

\_\_\_\_\_  
Leticia Vacek  
CITY CLERK

\_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Leslie O. Haby  
ASSISTANT CITY ATTORNEY

**EXHIBIT A**  
PROPERTY/REINVESTMENT ZONE DESCRIPTION

