

AN ORDINANCE **20 1 1 - 1 2 - 1 5 - 1 0 5 4**

APPROVING A 10-YEAR, 100% TAX ABATEMENT AGREEMENT FOR REAL PROPERTY IMPROVEMENTS; A GRANT AGREEMENT FOR \$224,000; AND A SAWS FEE WAIVER FOR UP TO \$100,000 WITH ROCKY CREEK PARTNERS, LLC FOR THE 1010 SOUTH FLORES LOFTS PROJECT.

* * * * *

WHEREAS, Rocky Creek Partners, L.L.C. is proposing a \$7,453,201 investment at 1010 South Flores for a project (the "Project") to include 56 market-rate housing units in the downtown area, with \$402,490.00 in public improvements, located within the Inner City Reinvestment Infill Policy (ICRIP) Target Area; and

WHEREAS, the Project is currently located in an Enterprise Zone and therefore automatically qualifies as a Reinvestment Zone; and

WHEREAS, with the real property and public improvements investment, and downtown housing location in the ICRIP Target Area, the Project qualifies for a 10-year, 100% tax abatement for real property improvements, a \$224,000 grant from the Inner City Incentive Fund, and a SAWS fee waiver in an amount up to \$100,000; **NOW THEREFORE:**

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

SECTION 1. City Council approves a 10-year, 100% Tax Abatement Agreement for real property improvements, included as Attachment I.

SECTION 2. City Council also approves a \$224,000 Grant Agreement from the Inner City Incentive Fund, included as Attachment II.

SECTION 3. City Council further approves a San Antonio Water System (SAWS) fee waiver for an amount up to \$100,000.

SECTION 4. Funding in the amount of \$224,000.00 for this Ordinance is available in Fund 11001000, Cost Center 7001990059 and General Ledger 5201040, as part of the Fiscal Year 2012 Budget.

SECTION 5. Payment not to exceed \$224,000.00 is authorized and should be encumbered with a purchase order.

SECTION 6. The financial allocations in this Ordinance are subject to approval by the Chief Financial Officer (CFO), City of San Antonio. The CFO may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS

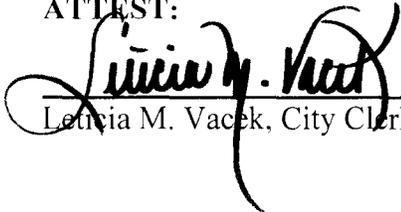
Elements, Internal Orders, General Ledger Accounts and Fund Numbers as necessary to carry out the purpose of this Ordinance.

SECTION 7. This Ordinance shall be effective immediately upon the receipt of at least eight affirmative votes; if less than eight affirmative votes are received, then this Ordinance shall be effective on the tenth day after passage.

PASSED AND APPROVED this 15th day of December, 2011.

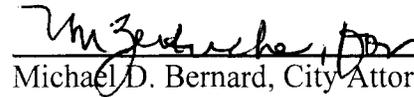

M A Y O R
Julián Castro

ATTEST:



Letitia M. Vacek, City Clerk

APPROVED AS TO FORM:



Michael D. Bernard, City Attorney



Request for
COUNCIL
ACTION

City of San Antonio



Agenda Voting Results - 35

Name:	6, 7, 8, 10, 11, 12, 13, 14, 16, 18, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30A, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48						
Date:	12/15/2011						
Time:	10:36:06 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing a 10-year, 100% tax abatement agreement for real property improvements; a grant agreement for \$224,000; and a SAWS fee waiver for up to \$100,000 with Rocky Creek Partners, LLC for the South Flores Lofts project located at 1010 South Flores in Council District 1. [Pat DiGiovanni, Deputy City Manager; Mark Brodeur, Director, Center City Development]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2	x					
Jennifer V. Ramos	District 3		x			x	
Rey Saldaña	District 4		x				x
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
Carlton Soules	District 10		x				

ATTACHMENT I

STATE OF TEXAS	§	
	§	CITY OF SAN ANTONIO
	§	TAX ABATEMENT AGREEMENT
COUNTY OF BEXAR	§	FOR REAL AND PERSONAL PROPERTY

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:

Applicable Percentage Amount to be

Total Taxes Abated X from above Schedule = Recaptured

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**

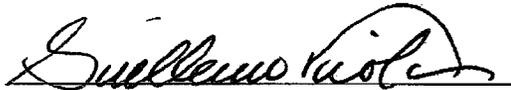
This Agreement shall be executed in triplicate originals, with an original going to each Party and one being filed with the City Clerk.

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

ATTACHMENT II

STATE OF TEXAS

§
§
§
§

**ECONOMIC DEVELOPMENT
GRANT AGREEMENT OF THE
CITY OF SAN ANTONIO**

COUNTY OF BEXAR

This Economic Development Grant Agreement (hereinafter referred to as the "Agreement") is made and entered into by and between the City of San Antonio, a municipal corporation of the State of Texas, (hereinafter referred to as the "GRANTOR"), acting by and through its City Manager or her designee, and Rocky Creek Partners, L.L.C, a Texas limited liability corporation, (hereinafter referred to as the "GRANTEE"), and together referred to herein as the "Parties.

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code, GRANTOR is authorized to establish and provide for the administration of one or more programs, including an Economic Development Program for making loans and grants of public money to promote state or local economic development and to stimulate business and commercial activity in the municipality; and

WHEREAS, under City Ordinance No. 100684, GRANTOR created and adopted such a Program; and

WHEREAS, GRANTEE is engaged in an economic development project that will be located within the City's Inner City Reinvestment/Infill Policy Target Area ("**ICR/IP**") making it eligible for certain economic incentives; and

WHEREAS, the economic development project will consist of a total of 48,369 sq. ft of building space (the "Facility") that, upon its completion, shall consist of a 56-unit, market-rate rental housing development, public improvements, and surface parking consisting of 66 internal and 22 street-side parking spaces (the "**Project**"); and

WHEREAS, GRANTEE has requested an economic development grant for the purpose of defraying costs associated with the construction of the Project; and

WHEREAS, GRANTOR has identified economic development funds available for GRANTEE to use to carry out the Project under the terms and conditions of this Agreement; and

WHEREAS, the City Council of GRANTOR has authorized the City Manager or designee to enter into this Agreement with GRANTEE in accordance with City Ordinance No. 2011-12-15-_____, passed and approved on December 15, 2011; **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:

SECTION 1. AGREEMENT PURPOSE

This economic development Project is anticipated to promote local economic development and stimulate business and commercial activity in the City of San Antonio. The GRANTOR is supporting the Project through this economic development grant to provide funds for the purpose of defraying costs associated with the Project's construction and this Agreement may be a component of a larger incentive package offered by GRANTOR and intended, in part, to spur development in GRANTOR's ICR/IP area and to attract additional future development.

SECTION 2. AGREEMENT PERIOD

This Agreement shall become effective upon its full execution by the Parties (the “*Effective Date*”) and shall terminate upon the earliest of the following events: (i) GRANTOR’s payment to GRANTEE of the Maximum Disbursement Amount (defined below), or (ii) December 31, 2013

SECTION 3. PROJECT REQUIREMENTS

A. GRANTEE shall invest approximately SEVEN MILLION FOUR HUNDRED FIFTY THREE THOUSAND TWO HUNDRED AND ONE DOLLARS (\$7,453,201.00) in direct costs for Real Property Improvements (the “*Improvements*”) to the Property located at 1010 S. Flores St., San Antonio, Texas 78204 as further described in Attachment I (the “*Project Site*”).

B. GRANTEE shall cause Commencement of Construction (defined below) of the Project to occur prior to April 1, 2012 (the “*Commencement Deadline*”) and shall cause the Project to consist of: (1) a total of 48,369 sq. ft. of building space with fifty six (56) market-rate rental housing units; (2) surface parking with 66 internal and 22 street-side parking spaces; and (3) approximately FOUR HUNDRED TWO THOUSAND FOUR HUNDRED NINETY DOLLARS (\$402,490.00) of public improvements to include, without limitation, water main, curbs, sidewalks, street lighting, utility relocation, and landscaping (the “*Public Improvements*”) as further described in Attachment II. For purposes hereof, “*Commencement of Construction*” shall mean the initiation of demolition, excavation or other activities on the Project Site consistent with standard construction procedures.

C. GRANTEE shall use commercially reasonable efforts to complete construction of the Project before December 31, 2012, but shall cause completion of construction of the Project to occur no later than April 1, 2013, subject to Force Majeure (the “*Completion Date*”).

D. GRANTEE shall comply with all applicable laws and regulations applying to the construction and operation of the Project.

E. GRANTEE shall provide updates on the construction of the Project upon receipt of reasonable written request of GRANTOR. Such updates may be general in nature but shall include information necessary for GRANTOR to determine GRANTEE’s compliance with the terms and conditions of this Agreement.

SECTION 4. ECONOMIC DEVELOPMENT CHAPTER 380 PROGRAM GRANT

Economic Development Chapter 380 Program Grant Funds. GRANTOR agrees to provide GRANTEE with Economic Development Program Grant Funds in a total cumulative amount of TWO HUNDRED TWENTY FOUR THOUSAND DOLLARS (\$224,000.00) (the “*Maximum Disbursement Amount*”), subject to the terms and conditions of this Agreement. This amount represents funding from GRANTOR’s Inner City Incentive Fund (“*ICIF*”).

A. **Initial Disbursement.** GRANTOR shall disburse the following initial amount to GRANTEE following: 1) GRANTOR’s passage of a City Ordinance approving this Agreement; 2) execution of this Agreement by the Parties; and 3) GRANTEE providing to GRANTOR the following: (i) a certified letter from a qualified financial institution upon which GRANTOR may determine, in its sole discretion, that GRANTEE has funds available on deposit or under an existing credit facility to complete the construction of the Project; and (ii) written confirmation from GRANTEE that it has received the necessary building permits to cause the

Commencement of Construction of the Project; and (iii) written confirmation from GRANTEE that Commencement of Construction of the Project has occurred by April 1, 2012. GRANTOR shall determine, in its sole discretion, whether the evidence required in this section and provided by GRANTEE is sufficient to satisfy the preceding conditions for disbursement. If GRANTEE has satisfied the preceding conditions, then the Initial Disbursement shall be:

- (i). An Economic Development Grant in an amount not to exceed ONE HUNDRED TWELVE THOUSAND DOLLARS AND NO CENTS (\$112,000.00).

B. **Final Disbursement.** GRANTOR shall disburse the following final amount to GRANTEE, contingent upon the satisfactory fulfillment of the conditions precedent for the Initial Disbursement, and following: 1) satisfactory delivery of a total of fifty six (56) market-rate rental housing units; and (2) a total of FOUR HUNDRED TWO THOUSAND FOUR HUNDRED NINETY DOLLARS (\$402,490.00) in Public Improvements. GRANTOR shall determine, in its sole discretion, whether the evidence required in this section and provided by GRANTEE is sufficient to satisfy the preceding conditions for disbursement. If GRANTEE has satisfied the preceding conditions, then the Final Disbursement shall be:

- (i). An Economic Development Grant in an amount not to exceed ONE HUNDRED TWELVE THOUSAND DOLLARS AND NO CENTS (\$112,000.00).

- (ii) In the event that GRANTEE delivers less than EIGHTY PERCENT (80%) of the fifty six (56) market-rate rental housing units, then GRANTEE shall be subject to the Termination and Recapture provisions of Section 8 of this Agreement.

C. If, during the Term of this Agreement, GRANTEE is in default of any terms of any agreement wherein the City of San Antonio is a party, or GRANTEE 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 Termination and Recapture provisions of Section 8 of this Agreement shall apply.

SECTION 5. GRANT WITHHOLDING, FORFEITURE AND REFUND

A. It is expressly understood and agreed by the Parties hereto that if GRANTEE fails to submit to GRANTOR in a reasonably timely and satisfactory manner any information or report required under this Agreement, GRANTOR may, at its sole option and in its sole discretion, withhold, in whole or in part, the Initial and/or Final Disbursement amount owed to GRANTOR. If GRANTOR withholds such payments, it will notify GRANTEE in writing of its decision and the reasons therefore. Payments withheld pursuant to this paragraph may be held by GRANTOR until such time as the delinquent obligations for which funds are withheld are fulfilled by GRANTEE.

B. If Commencement of Construction fails to occur by the Commencement Deadline, GRANTOR shall forfeit any funds provided for in this Agreement. In addition, GRANTOR may terminate this Agreement and cause GRANTEE to repay any and all funds disbursed to GRANTEE by GRANTOR under this Agreement as provided in Section 8 below.

C. GRANTEE shall refund to GRANTOR any sum of money overpaid by GRANTOR to GRANTEE in the event funds disbursed by GRANTOR were in excess of the Maximum Disbursement Amount. Such refund shall be made by GRANTEE to GRANTOR within sixty (60) calendar days after GRANTEE's receipt of the Refund Request.

SECTION 6. DEFAULT AND GRANTOR'S REMEDIES

A. **Default Events.** Any one of the following that occurs and continues beyond the applicable Cure Period shall constitute a Default Event:

1. Failure of GRANTEE or GRANTOR to observe and perform in any material respect any covenant, condition or agreement on its part required to be observed or performed under any term or condition of this Agreement following the expiration of sixty (60) days written notice to cure (the "*Cure Period*") from the non-defaulting Party and as further provided in Section 6(C) below; and/or
2. The dissolution or liquidation of GRANTEE or the filing by GRANTEE of a voluntary petition in bankruptcy, or failure by GRANTEE to promptly cause to be lifted any execution, garnishment or attachment of such consequence as will impair GRANTEE's ability to carry on its obligations under this Agreement; and/or
3. The commission by GRANTEE of any act of voluntary or involuntary bankruptcy under any state or federal law; and/or
4. The admittance of GRANTEE, in writing, of its inability to pay its debts generally as they become due, or a receiver, trustee or liquidator of GRANTEE shall be appointed in any proceeding brought against GRANTEE and shall not be discharged within ninety (90) days after such appointment.

B. **Non-Waiver of Default.** 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.

C. **Diligently Pursue Cure of Default.** 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 for such additional time as may be reasonable under the circumstances; provided that GRANTEE shall: (1) immediately upon receipt of such notice advise GRANTOR of GRANTEE'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.

SECTION 7. SUSPENSION

A. In the event GRANTEE materially fails to comply with the terms of this Agreement, GRANTOR shall provide GRANTEE with written notification as to the nature of the non-compliance. GRANTEE shall have sixty (60) days from the date of GRANTOR's written notification to cure any issue of non-compliance. Should GRANTEE fail to cure any default within this Cure Period, GRANTOR may, upon written Notice of Suspension to GRANTEE, suspend this Agreement to the extent of the non-compliance and withhold further disbursements related to the non-compliance to GRANTEE until the default has been cured. 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 that cannot with due diligence be cured within such sixty (60) day period, the 60-day Cure Period shall be extended for such additional time as may be reasonable under the circumstances; provided that GRANTEE shall: (1) immediately upon receipt of Notice of Suspension advise GRANTOR of GRANTEE'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 Section 7 shall be lifted upon a reasonable showing by GRANTEE to GRANTOR of compliance with or written waiver by GRANTOR of the term(s) in question.

D. GRANTOR shall not be liable to GRANTEE or to GRANTEE's creditors for costs incurred during any term of suspension of this Agreement.

SECTION 8. TERMINATION AND RECAPTURE

A. GRANTOR shall have the right to terminate this Agreement if GRANTEE materially defaults in the performance of its obligations under this Agreement and GRANTEE fails to cure such default within the time period set forth below. GRANTOR will provide GRANTEE with written notification as to the nature of the default, and GRANTEE shall have sixty (60) days from the date of GRANTOR's written notification to cure any such default. Should GRANTEE fail to cure any default within this Cure Period, GRANTOR may, upon issuance to GRANTEE of a written Notice of Termination, terminate this Agreement, withhold further payments to GRANTEE and seek repayment of any and all funds disbursed by GRANTOR.

B. 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 shall be extended for such additional time as may be reasonable under the circumstances, provided that GRANTEE shall: (1) immediately upon receipt of Notice of Termination advise GRANTOR of GRANTEE'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. Repayment of Disbursement. Provided that GRANTOR has disbursed funds to GRANTEE pursuant to the terms and conditions of this Agreement, if GRANTEE does not complete the Project in accordance with this Agreement and GRANTOR terminates this Agreement as provided in this Section 8, then GRANTEE shall refund the funds GRANTOR within sixty (60) calendar days after the date of termination.

D. Other Remedies Available. GRANTOR shall have the right to seek any remedy at law to which it may be entitled, in addition to termination and repayment of funds, if GRANTEE defaults under the material terms of this Agreement and fails to cure such default within the Cure Period set forth above. However, such termination and repayment shall be subject to any and all lawful offsets, settlements, deductions or credits to which GRANTEE may be entitled.

SECTION 9. RETENTION AND ACCESSIBILITY OF RECORDS

A. GRANTEE shall maintain the fiscal records and supporting documentation for expenditures of funds associated with this Agreement. GRANTEE shall retain such records, and any supporting documentation, for the greater of: (1) four [4] years from the end of the Term period; or (2) the period required by other applicable laws and regulations.

B. GRANTEE shall, within five (5) business days following advance written notice from GRANTOR, give GRANTOR, its designee, or any of their duly-authorized representatives, access to and the right to examine relevant books, accounts, records, audit reports, reports, files, documents, written or photographic material, videotape and other papers belonging to or in use by GRANTEE pertaining to this Agreement (the "*Records*"). The GRANTOR's access to GRANTEE's Records will be limited to

information needed to verify that GRANTEE 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 GRANTOR. In no event shall GRANTOR's access to GRANTEE's Records include any access to any personnel and/or medical records of any employees of GRANTEE. GRANTEE shall not be required to disclose to GRANTOR any information that by law GRANTEE is required to keep confidential. Should any good faith dispute or question arise as to the validity of data provided, GRANTOR reserves the right to require GRANTEE to obtain an independent firm to verify the information. This certified statement by an independent firm shall be provided at the sole cost of GRANTEE. The right to access the Records shall terminate five (5) years after the termination or expiration of this Agreement. Failure to provide reasonable access to the Records to authorized GRANTOR representatives shall give GRANTOR the right to suspend or terminate this Agreement as provided in Section 7 and 8 above. All Records shall be retained by GRANTEE 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. GRANTEE agrees to maintain the Records in an accessible location.

SECTION 10. AUDIT

GRANTOR reserves the right to confirm GRANTEE's compliance with the terms and conditions of this Agreement through a performance or financial audit, at the sole cost and expense of GRANTOR. Should such audit be performed, GRANTOR shall provide GRANTEE with a copy of any reports or findings that may be presented. If the audit notes deficiencies in GRANTEE's performances under the terms of this Agreement, the audit shall include a listing of requirements for the correction of such deficiencies by GRANTEE and a reasonable amount of time in which to attain compliance. Failure by GRANTEE to take action specified in the audit may be cause for suspension or termination of this Agreement.

SECTION 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.

TO GRANTOR:

(Whether personally delivered or mailed):

Center City Development Office

Attn: Director

P.O. Box 839966

San Antonio, Texas 78283-3966

- If by personal or overnight delivery:

TO GRANTEE:

- If mailed:

Rocky Creek Partners, LLC

Attn: Guillermo Nicolas

300 S. Flores St.

San Antonio, TX 78204

With a copy to:

Center City Development Office
Attn: Director
19th Floor
100 Houston St.
San Antonio, Texas 78205

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

SECTION 12. AUTHORIZED RELIEF FROM PERFORMANCE (*Force Majeure*)

The time periods set forth in this Agreement shall be extended due to events of Force Majeure, including but not limited to an act of war, order of legal authority, act of God, or other causes beyond the reasonable control of GRANTEE (collectively, "*Force Majeure*"). If there is a dispute between GRANTOR and GRANTEE as to the occurrence or duration of an event of Force Majeure, the burden of proof shall rest upon GRANTEE. To obtain an extension based upon Force Majeure, GRANTEE must provide written notice to GRANTOR of the occurrence of the Force Majeure event within ten (10) days following the date that GRANTEE becomes aware of the event and the fact that it will delay GRANTEE's performance of its obligations under this Agreement.

SECTION 13. CONFLICT OF INTEREST

GRANTEE shall use reasonable business efforts to ensure that no employee, officer or individual agent of GRANTEE 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. GRANTEE shall comply with Chapter 171, Texas Local Government Code as well as the City of San Antonio's Code of Ethics.

SECTION 14. NONDISCRIMINATION AND SECTARIAN ACTIVITY

A. GRANTEE shall not exclude from participation in, deny the benefits of, subject to discrimination under, or deny access to opportunities to participate in the construction of the Project, to any person on the grounds of race, color, national origin, religion, sex, sexual orientation, age or handicap.

B. None of the performances rendered by GRANTEE under this Agreement shall involve, and no portion of the funds received by GRANTEE 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. GRANTEE shall include the substance of this Section 14 in all agreements related to the construction of the Project.

SECTION 15. CHANGES AND AMENDMENTS

This Agreement represents the entire agreement between GRANTOR and GRANTEE with respect to the matters described herein and the same may not be modified, altered or amended except by written agreement signed by both GRANTOR and GRANTEE.

SECTION 16. SPECIAL CONDITIONS AND TERMS

GRANTEE understands and agrees that if GRANTEE is a "business" and if GRANTOR's contribution under this Agreement is a "public subsidy" as that term is defined in Chapter 2264 of Subtitle F, Title 10 of the Government Code (80(R) HB 1196), then GRANTEE is required to refund money, pursuant to 80(R) HB 1196, that GRANTEE has received from GRANTOR through this Agreement, in the event of a conviction of knowingly employing an undocumented worker, with repayment required within six months of final conviction. Interest shall accrue at the rate of .5% per month until the time of such repayment from the date of final conviction.

SECTION 17. SUBCONTRACTS

A. GRANTEE shall use reasonable business efforts to ensure that performance rendered under subcontracts, if any, complies with all terms and provisions of this Agreement as if such performance were rendered by GRANTEE.

B. GRANTEE, if subcontracting any of the performances hereunder, expressly understands that GRANTOR is in no way liable to GRANTEE's subcontractor(s).

C. GRANTEE shall obtain assurances from subcontractors, if any, that they will not exclude from, deny the benefit of, or subject to discrimination under any program or activity funded in whole or in part under this Agreement, any person on the grounds of race, creed, color, disability, national origin, sex, sexual orientation, or religion.

SECTION 18. DEBARMENT

By signing this Agreement, GRANTEE certifies that it will not knowingly award funds provided under this Agreement to any party which is debarred, suspended or otherwise excluded from or ineligible for participation in assistance programs by GRANTOR.

SECTION 19. NON-ASSIGNMENT

This Agreement is not assignable by either Party without the written consent of the non-assigning Party. Notwithstanding the foregoing, GRANTEE may assign this Agreement to a parent, subsidiary, affiliate entity or newly-created entity resulting from a merger, or other corporate restructure or reorganization of GRANTEE, or to any other entity owned or controlled, directly or indirectly, by GRANTEE, without GRANTOR's written consent. Following completion of construction of the Project, GRANTEE shall also have the right to assign this Agreement to any party that acquires the Project, subject to GRANTOR's prior written consent, which consent will not be unreasonably withheld, conditioned or delayed. In either of such cases, GRANTEE shall give GRANTOR prior written notice of the assignment or other transfer ten (10) days prior to the effective date of the assignment or as soon as legally permissible, whichever is later. 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 does not relieve GRANTOR or GRANTEE from liability under this Agreement and shall not release GRANTOR or GRANTEE from performing any of the terms, covenants and conditions herein; provided that a permitted assignment of this Agreement by GRANTEE following completion of construction of the Project shall relieve GRANTEE of any liability hereunder arising following the assignment provided that the assignee has expressly assumed all obligations and liabilities of GRANTEE under this Agreement attributable to the period following the date of such assignment. Any assignment of

this Agreement in violation of this Section 19 shall enable GRANTOR to terminate this Agreement and exercise its rights under Section 8 of this Agreement.

Further, GRANTEE may also assign this Agreement, with GRANTOR's written consent and prior notice to GRANTOR, to a mortgagee or lender providing financing to GRANTEE with respect to the Project in the event such mortgagee or lender exercises its foreclosure right against GRANTEE; provided that any assignment will not be effective against GRANTOR unless and until written notice of such assignment and exercise of rights is provided to GRANTOR, and shall be contingent upon the mortgagor or lender agreeing in writing to the terms and conditions of this Agreement.

SECTION 20. 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.

SECTION 21. LEGAL AUTHORITY

A. Each Party assures and guarantees to the other that they possess 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. Either Party shall have the right to suspend or terminate this Agreement if there is a dispute as to the legal authority to enter into this Agreement, any amendments hereto or failure to render performances hereunder.

[Signatures appear on next page]

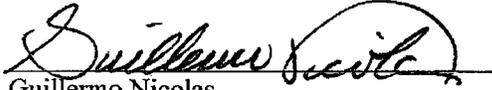
WITNESS OUR HANDS, EFFECTIVE as of _____, 201__:

Accepted and executed in triplicate originals on behalf of the City of San Antonio pursuant to Ordinance Number 2011-12-15-_____, dated December 15, 2011, and Rocky Creek Partners, LLC.

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 required):

Leticia Vacek
CITY CLERK

APPROVED AS TO FORM:

Leslie O. Haby
ASSISTANT CITY ATTORNEY

ATTACHMENT I
Project Site

ATTACHMENT II
Public Improvements

Client: Landbridge Partners	Date: 5/18/2011
Project: Flores & Guenther Condos	Prepared By: Brian Parker

Title: Public Improvements Summary	Sheet: 1
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Item No.	Item Description	Quantity	Unit	Unit Price	Item Cost
1	South Flores Pvmnt Mill and Overlay	675	SY	\$22.00	\$14,850
2	Rische Street Pvmnt Mill and Overlay	1,150	SY	\$22.00	\$25,300
3	Off-Site Parking	505	SY	\$50.00	\$25,250
4	Fire Hydrant Extension	1	LS	\$12,000	\$12,000
5	Wastewater Service / Relocation	1	LS	\$75,000	\$75,000
6	Curb Installation (Rische & Nathan)	280	LF	\$10.00	\$2,800
7	6' and 4' Std. Sidewalk (4" thickness)	500	SY	\$25.00	\$12,500
8	Off-Site Drainage Improvements	1	LS	\$85,000	\$85,000
9	Tree Mitigation (34" Pecan)	34	IN	\$300.00	\$10,200
10	Streetscaping	1	LS	\$60,000	\$60,000
11	O/H Power Pole Relocation(s)	1	LS	\$18,000	\$18,000
12	Mobilization / Bonding / Testing	1	LS	\$25,000	\$25,000
Subtotal:					\$365,900
Conting. (%,+/-) 10%					\$36,590
Total: Proposed Improvements					\$402,490
13	Impact Fees	1	LS	\$236,304	236,304
14	Rezoning & Building Permit Fees	1	LS	\$20,680	20,680
Total: City Fees					\$256,984
Grand Total:					\$659,474

Basis for Cost Projection:

- No Design Completed
- Preliminary Design
- Final Design

This total does not reflect engineering or technical services.

No final civil engineering or capacity analysis/study has been conducted for the proposed development. Quantities provided are approximate based on available survey and site information.

The Engineer has no control over the cost of labor, materials, equipment, or over the Contractor's methods of determining prices or over competitive bidding or market conditions. Opinions of probable costs provided herein are based on the information known to Engineer at this time and represent only the Engineer's judgment as a design professional familiar with the construction industry. The Engineer cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from its opinions of probable costs.