

STATE OF TEXAS

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**CHAPTER 380 ECONOMIC
DEVELOPMENT GRANT
AGREEMENT FOR THE
MIDCROWN PROJECT**

COUNTY OF BEXAR

This Economic Development Grant Agreement (hereinafter “Agreement”) is made and entered into on _____, 2024 (the “Effective Date”) by and between the City of San Antonio, a municipal corporation of the State of Texas, (hereinafter “City”), acting by and through its City Manager or his designee, the Inner City Tax Increment Reinvestment Zone (“ Inner City TIRZ”), acting by and through its Board of Directors, and the San Antonio Housing Trust Public Facility Corporation, a Texas Nonprofit Corporation (hereinafter “Developer”), and together referred to as the “Parties.”

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code, City is authorized to grant municipal funds in furtherance of public purposes for economic development projects; and

WHEREAS, in accordance with City Ordinance No. 100684, the City created an economic development program for the purpose of making such grants available; and

WHEREAS, Developer is engaged in an economic development project that will be located within the city limits of the City of San Antonio consisting of the improvement of real property located at the intersection of Midcrown Dr. and Eisenhower Rd. San Antonio, TX 78218 (the “Project”); and

WHEREAS, the Project will include the development of a future affordable housing project and/or place of public accommodation; and

WHEREAS, Developer has requested funding from the City to pay for the acquisition of a site for the development of the Project; and

WHEREAS, City has identified funds to grant the Developer to acquire the Project site from an Economic Development Grant from the Inner City TIRZ in an amount not to exceed Two Million Nine Hundred Sixteen Thousand Dollars and No Cents (\$2,916,000.00) (“TIRZ Grant”); and

WHEREAS, the Board of Directors (the “Board”) of the Inner City TIRZ has authorized the TIRZ Grant as reflected in Resolution No. T11-2024-05-30-01R, passed and approved on May 30, 2024; and

WHEREAS, the City Council has authorized the Board Chair of the Inner City TIRZ, and the City Manager or his designee to enter into this Agreement with Developer as reflected in Ordinance No. 2024-__-__-____, passed and approved on _____, 2024;

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

The Project is anticipated to promote local economic development and to stimulate business and commercial activity in the City of San Antonio in accordance with Chapter 380 of the Texas Local Government Code. The City is supporting the Project through the Grant Funds, as detailed in the recitals, to be used to defray costs of the Project and promote investment and job creation in a targeted area of the City.

SECTION 2. TERMS AND CONDITIONS OF GRANT

In consideration of Developer acquiring and maintaining the Property site located at the intersection of Midcrown Dr. and Eisenhower Rd. San Antonio, TX 78218 in Council District 2, either directly or through an affiliated entity, for the development of affordable housing that is aligned with the City's Strategic Housing Implementation Plan and/or a place of public accommodation, the City agrees to provide funding to Developer from the following sources and on other conditions set forth herein.

A. **Economic Development Program Grant.** As evidenced by the passage of Resolution T11 2024-05-30-0_R by the Board of Directors of the Inner City Tax Increment Reinvestment Fund and Ordinance No. _____ passed by the San Antonio City Council on _____, City has agreed to provide Developer with a grant in the aggregate amount of Two Million Nine Hundred Sixteen Thousand Dollars and No Cents (\$2,916,000.00) in connection with financing the Project from the Inner City Tax Increment Reinvestment Fund.

B. **Grant Disbursement.** City will make the TIRZ Grant available to Developer at the closing of the purchase of the Project site (the "Grant Disbursement Date") by Developer, either directly or through an Affiliated entity.

D. **Sale of Project.** In the event that Developer or its Affiliate sells the Project site, the Developer agrees that the TIRZ Grant shall be repaid from the sale proceeds to the Inner City TIRZ.

E. **Project Scope Approval.** It is a material condition of this Agreement that the Developer or its Affiliate receive written acknowledgement, prior to the commencement of any construction, from the Director of the City's Neighborhood and Housing Services Department, or his or her designee, that the final scope or development of the Project constitutes affordable housing that aligns with the City's Strategic Housing Implementation Plan or its successor and/or a place of public accommodation.

F. **Lien.** In order to secure the obligation to repay the TIRZ Grant in the event of a sale of the Project, Developer or its Affiliate agrees to execute the Real Estate Lien, which is attached hereto as Exhibit “A”, in the amount of Two Million Nine Hundred Sixteen Thousand Dollars and No Cents (\$2,916,000.00) (the “Lien”). The Inner City TIRZ agrees to release the Lien upon Developer providing Proof of Commencement of an affordable housing project and/or place of public accommodation. For the purpose of this Agreement, Proof of Commencement is defined as:

- 1) a funding availability letter from a financial institution stating that the funds are available to complete an affordable housing project and/or place of public accommodation; and,
- 2) a copy of an approved building permit

SECTION 3. AGREEMENT PERIOD

This Agreement shall commence upon its execution and shall terminate upon Developer providing Proof of Commencement on the Project site (the “Term”).

SECTION 4. RETENTION AND ACCESSIBILITY OF RECORDS

A. Developer shall maintain the fiscal records and supporting documentation for expenditures of funds directly associated with this Agreement. Developer shall retain such records, and any supporting documentation, for the greater of: (1) Four [4] years after the end of the Term; 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 books, accounts, records, audit reports, reports, files, documents, written or photographic material, videotape and other papers, things, or property belonging to or in use by Developer pertaining directly to this Agreement (the “Records”). Any information that is not required by law to be made public shall be kept confidential by City. Developer shall not be required to disclose to the City any information that by law Developer is required to keep confidential. Developer agrees to maintain the Records in an accessible location and to provide citizens reasonable access to the Records consistent with the Texas Public Information Act on the same terms as the Records are made available to the City as set forth above.

SECTION 5. MONITORING

City reserves the right to confirm compliance by Developer with the terms and conditions of this Agreement.

SECTION 6. NOTICE

Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for City, to:

City of San Antonio
Neighborhood and Housing Services
TIF Division
P.O. Box 839966
San Antonio, Texas 78283-3966

If intended for Developer, to:

San Antonio Housing Trust Public Facilities Corporation
Fountainhead Tower
8200 IH-10 West, Suite 501
San Antonio, Texas 78230

SECTION 7. 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.

SECTION 8. 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 directly related to the Project. 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 filed against Developer or any subcontractors, or of any 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 operations on the Project, including without limitation, landlord tenant disputes, personal injury actions (slip and falls), and other operational activities or relationships.

B. City and Developer acknowledge 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.

SECTION 9. CHANGES AND AMENDMENTS

A. Except as provided in Section 9(C) below, any alterations, additions, or deletions to the terms of this Agreement shall be by amendment hereto in writing and executed by both parties to this Agreement upon City Council and Board approval and authorization of Developer.

B. It is understood and agreed by the parties hereto that performances under this Agreement shall be rendered in accordance with the laws and rules governing the Economic Development Program as set forth in Texas Local Government Code Chapter 380, and the terms and conditions of this Agreement.

C. 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.

SECTION 10. NON-ASSIGNMENT

Developer may transfer its interest in the Project at any time to an entity that is an Affiliate of Developer without the written consent of the Inner City TIRZ Board. For the purpose of this Agreement, Affiliate means an entity that (a) is directly or indirectly controlling, controlled by, or under common control with, the Developer; or (b) Developer owns directly or indirectly twenty-five percent (25%) or more of the equity or voting interests of an entity that owns the Project site.

Otherwise, this Agreement is not assignable without the written consent of Board, through passage of a Board Resolution, and City, through passage of a City Ordinance, approving such assignment. Any other attempt to assign the Agreement shall not relieve Developer from liability under this Agreement and shall not release Developer from performing any of the terms, covenants and conditions herein. Developer shall be held responsible for all funds received under this Agreement.

SECTION 11. 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 12. NON-WAIVER

No course of dealing on the part of the City, the Board, or Developer nor any failure or delay by the City, the Board, or Developer in exercising any right, power, or privilege under this Agreement shall operate as a waiver of any right, power or privilege owing under this Agreement.

The receipt by the City of services from an assignee of Developer shall not be deemed a waiver of the covenant(s) in this Agreement against assignment or an acceptance of the assignee or a release of Developer from further performance by Developer of the covenant(s) contained in this Agreement. No provision of this Agreement shall be deemed waived by the City unless such waiver is in writing, and approved by the City through an ordinance passed and approved by its City Council.

SECTION 13. INDEPENDENT CONTRACTOR.

Developer understands and agrees that Developer is and shall be deemed to be an independent contractor, and not an officer, agent, servant or employee of City, and that Developer is responsible for the acts or omissions of its officers, agents, employees, contractors, and subcontractors, and that the City shall in no way be responsible therefor. Nothing contained herein shall be deemed or construed by the Parties hereto or by any third party as creating the relationship of employer-employee, principal-agent, partners, joint venture, or any other similar such relationship, between the Parties hereto. Developer understands and agrees that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the Project being completed in connection with this Agreement and that the Developer has no authority to bind the CITY.

[SIGNATURE PAGE TO FOLLOW]

WITNESS OUR HANDS, EFFECTIVE as of _____, 2024:

CITY OF SAN ANTONIO,
a Texas Municipal Corporation

Erik Walsh
CITY MANAGER

**SAN ANTONIO HOUSING TRUST
PUBLIC FACILITY CORPORATION**
a Texas Non-Profit corporation

Name: *Pedro M. Davis*
Title: *Assistant Secretary*

BOARD OF DIRECTORS
Inner City TIRZ #11

Councilperson Jalen McKee-Rodriguez
BOARD CHAIR

APPROVED AS TO FORM:

CITY ATTORNEY