

FIRST AMENDMENT
TO THE CENTER CITY HOUSING INCENTIVE POLICY AGREEMENT
BETWEEN THE CITY OF SAN ANTONIO AND KHI, INC

This First Amendment to the Center City Housing Incentive Policy Agreement (“First Amendment”) is entered into by and between the City of San Antonio (“CITY”) and KHI, Inc. (“DEVELOPER”) together referred to as “the Parties.”

RECITALS

- A. CITY and DEVELOPER are parties to a certain Center City Housing Incentive Policy Agreement dated on or about December 11, 2017 (the “Agreement”).
- B. CITY approved a CCHIP Term Sheet – Amendment #1 dated on or about October 25, 2019, attached hereto as **Attachment I**, amending certain terms of the Agreement.
- C. CITY and DEVELOPER desire to amend the Agreement to reflect the amended terms of the CCHIP Term Sheet – Amendment #1.
- D. In accordance with Section 14 of the City of San Antonio Center City Housing Incentive Policy (the “Policy”) approved by City Council on June 16, 2016, the City Manager or designee, in conjunction with the City Attorney’s Office, have authority to amend the Agreement since the amendment does not change the total incentive amount.
- E. All other provisions of the Agreement shall remain in full force and effect.

AMENDMENT

NOW THEREFORE, CITY and DEVELOPER hereby agree and amend as follows:

- 1. Definitions. All capitalized terms used in this Amendment without definition herein shall have the meanings assigned to such terms in the Agreement.
- 2. Amendment. The Parties hereby agree to amend the Agreement as follows, where the amended language is emphasized in italics:

a. RECITALS

WHEREAS, DEVELOPER is engaged in an economic development project that will be located within the city limits of San Antonio and within the boundaries of the TIRZ that will consist of the construction of approximately *SIXTY-THREE (63)* rental housing units, commercial retail space, and structured parking to be located at 139-

151 E Commerce St, San Antonio, TX 78205 (the "Project Site"), as more specifically described in Exhibit A; and

WHEREAS, once completed, the Project is anticipated to result in the investment of approximately *FORTY-THREE MILLION DOLLARS AND 0 CENTS (\$43,000,000.00)* in land acquisition and real property improvements within the boundaries of the TIRZ and City Council District 1; and

WHEREAS, DEVELOPER is seeking economic incentives from the CITY and the TIRZ to undertake and complete the Project; and

WHEREAS, the CITY and the TIRZ have identified funds to be made available to DEVELOPER in the form of an economic development program grant and certain fee waivers (the "Incentives") for use in undertaking and completing the Project in accordance with the terms and conditions of this Agreement; and

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code and Section 311.010(b) and Section 311.010 (h) of the Texas Tax Code, the CITY and the TIRZ are authorized to grant and loan funds to promote state or local economic development and to stimulate business and commercial activity in the municipality and within the TIRZ; and

WHEREAS, the City Council has authorized the City Manager or her designee to enter into this Agreement in accordance with the City's Center City Housing Incentive Policy (the "Policy"), Exhibit B, as approved by City Ordinance No.2016-06-16-0468, passed and approved on June 16, 2016, to grant and loan certain funds as described herein and to waive certain fees; and

WHEREAS, the Board of Directors of the TIRZ, by resolution dated June 23, 2016, has authorized the TIRZ to enter into this Agreement for the limited purpose of authorizing Tax Increment Funds ("TIF"), which, pursuant to Section 311.004, Texas Tax Code, are certain funds

b. ARTICLE III. PROJECT REQUIREMENTS

A. The Project.

1. Investment. DEVELOPER shall invest approximately *FORTY-THREE MILLION DOLLARS AND 0 CENTS (\$43,000,000.00)* (the "Minimum Investment") in an economic development project that will be located within the city limits of San Antonio and within the boundaries of the TIRZ that will consist of the construction of approximately *sixty-three (63)* rental housing units, *10,000* square feet of commercial retail space, and a structured parking

garage located at the Project Site (the "Project"). The Minimum Investment shall include, but not be limited to, expenditures in: land acquisition, design, building construction costs, engineering, public improvement costs, taxes and insurance, administrative and financing costs, and DEVELOPER fees, as described in DEVELOPER'S CCHIP Application, **Exhibit C**.

2. Construction. DEVELOPER shall commence construction and demolition, if applicable, at the Project Site on or before *December 31, 2019* ("Commencement Date"), and shall use commercially reasonable efforts to complete construction no later than *November 30, 2021* (the "Completion Date"), subject to Force Majeure as defined in this Agreement. The Commencement Date shall be determined by the issuance of a building permit for the Project Site and CITY's receipt of correspondence from the general contractor for the Project certifying that construction has commenced. The Completion Date shall be determined by the issuance of a final Certificate of Occupancy for the Project Site by CITY, not to be unreasonably withheld.

c. **ARTICLE IV. ECONOMIC DEVELOPMENT PROGRAM INCENTIVES**

- B. Chapter 380 Economic Development Loan. CITY is providing DEVELOPER with a Chapter 380 Economic Development Loan in a cumulative amount not to exceed *TWO HUNDRED FIFTY THOUSAND DOLLARS AND 0 CENTS (\$250,000.00)* (the "Economic Development Loan"). The loan may consist of both forgivable and non-forgivable loan funds. The funds made available to DEVELOPER through this Agreement are made solely from lawfully available funds that have been appropriated by CITY. DEVELOPER understands that any disbursement of the Economic Development Loan funds is contingent upon CITY'S availability of funds at the time of disbursement and should be requested within a reasonable timeframe as outlined in this Section B. If Economic Development Loan funds are not requested prior to 90 days after project completion, Economic Development Loan funds will be forfeited.

2. Mixed Use Loan.

- b. Mixed Use Loan Forgiveness. In accordance with the CCHIP, twenty percent (20%) of the Mixed Use Loan funds shall be forgiven annually over a 5-year period provided that documentation is provided to the City indicating that *10,000* of commercial retail space at the Project Site has been developed and leased for at least 80% of the 5-year term and that the tenant of the space has used the funding for finish-out improvements.
3. Development Loan. *The Economic Development Loan of ONE HUNDRED TWENTY FIVE THOUSAND DOLLARS AND 0 CENTS (\$125,000.00) shall be disbursed to DEVELOPER no later than sixty (60) days following a written request from DEVELOPER to disburse the funds, and requirements*

outlined in Article IV (a)-(e).

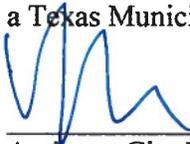
- a. Use. *The purpose of the Economic Development Loan is to provide an economic incentive to undertake and complete the Project.*
- b. Development Loan Forgiveness. *In accordance with the Policy, the Economic Development Loan is forgivable to a Project in the Central Business District (CBD) at a rate of fifteen percent (15%) annually in year one (1) through year six (6) and ten percent (10%) in the seventh year given all the requirements of this Agreement are met.*
- c. Due Upon Sale. *Should DEVELOPER sell the Project before the Economic Development Loan has been forgiven, the remaining balance of the Development Loan must be repaid in full upon sale of the Project.*

4. Acceleration of Loan Repayment. Should DEVELOPER, at the sole discretion of CITY, breach a material term of this Agreement and not cure after given a reasonable opportunity to do so and CITY terminates the Agreement in accordance with Article VII, then, as of the date of termination of the Agreement, the entire remaining principal balance and Accrued interest of all Loan Funds shall be due and payable to CITY no later than sixty (60) days following CITY's Notice of Termination to DEVELOPER.

- d. No Other Changes. Except as specifically set forth in this First Amendment, all of the terms and conditions of the Agreement shall remain the same and are hereby ratified and confirmed. The Agreement shall continue in full force and effect and with this First Amendment shall be read and construed as one instrument.
5. Choice of Law. This First Amendment shall be construed in accordance with and governed by the laws of the State of Texas.
6. Counterparts. This First Amendment may be executed in any number of counterparts, but all such counterparts shall together constitute but one instrument.

WITNESS HEREOF, the parties hereto have executed in triplicate originals of this First Amendment on the 15 day of November, 2019.

CITY OF SAN ANTONIO
a Texas Municipal Corporation



Assistant City Manager

SA Floodgate, LLC.,
a Texas limited liability company

By:



Keller Henderson, Manager

APPROVED AS TO FORM:



City Attorney

**HOUSTON STREET TAX INCREMENT
REINVESTMENT ZONE#9**

Name:

BOARD CHAIRPERSON

