

STATE OF TEXAS

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**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 Bakery Offices, Ltd. (hereinafter referred to as the "GRANTEE"), and together referred to 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 a 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 undertaking an economic development project that will be located within the City's Midtown Tax Increment Reinvestment Zone along Broadway St., Millrace St. and Avenue B in the City's northern downtown area; and

WHEREAS, the economic development project will consist of GRANTEE investing approximately \$23,200,000.00 to redevelop 107,644 square feet of commercial space in the facility formerly known as the Butterkrust Bakery, completing approximately \$1,511,150.00 in public improvements and creating and maintaining 125 jobs (the "Project"); and

WHEREAS, GRANTEE has requested an economic development grant for the purpose of defraying costs associated with undertaking and completing 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 her designee to enter into this Agreement with GRANTEE in accordance with City Ordinance No. 2010-12-~~09~~ -1030, passed and approved on December 9th, 2010;

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 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 is a component of a larger incentive package offered by GRANTOR and intended, in part, to spur development in GRANTOR's Tax Increment Reinvestment Zone and Inner City Reinvestment Infill Policy area and to attract additional future development.

SECTION 2. AGREEMENT PERIOD

This Agreement shall commence immediately upon its full execution by the Parties ("Effective Date") and shall terminate upon GRANTOR's payment to GRANTEE of the Maximum Disbursement Amount (defined below).

SECTION 3. PROJECT REQUIREMENTS

A. GRANTEE shall invest approximately TWENTY THREE MILLION TWO HUNDRED THOUSAND DOLLARS (\$23,200,000.00), including equity, land, and loan proceeds ("Project Costs), to improve the real property located at or adjacent to 2301 Broadway, San Antonio, Texas, 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 March 1, 2011, (the "Construction Commencement Deadline") and shall cause the Project to consist of: (i) the commercial redevelopment of approximately 107,644 square feet of space within the Project Site; (ii) approximately ONE MILLION FIVE HUNDRED ELEVEN THOUSAND ONE HUNDRED AND FIFTY DOLLARS (\$1,511,150.00) of public improvements to include, without limitation, Avenue B parking and trail, Catalpa Channel improvements, Millrace improvements, façade improvements to PAGA and relocation or the burial of public utility lines (the "Public Improvements") as further described in Attachment II; and (iii) the employment of ONE HUNDRED AND TWENTY-FIVE (125) Full-Time Jobs as defined below in the immediate vicinity of the Project Site by Grantee and its tenants and not initially employed with CH Guenther & Son, Inc. or any of its subsidiaries. For purposes hereof, "Commencement of Construction" shall mean the commencement of work to demolish and/or dismantle the existing improvements situated on the Project Site, and a "Full-Time Job" shall be equivalent to two thousand eighty (2,080) straight-time paid hours in a fiscal year.

C. GRANTEE shall use commercially reasonable efforts to complete construction of the building shell, site work, and Guenther's finish out of the Project before September 1, 2012, 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/LOAN FUNDS

GRANTOR agrees to provide GRANTEE with Economic Development Program Grant and Loan Funds in a total cumulative amount of TWO MILLION FOUR HUNDRED SIXTY-EIGHT THOUSAND ONE HUNDRED AND FIFTY DOLLARS (\$2,468,150.00) (the "Maximum Disbursement Amount"), subject to the terms and conditions of this Agreement. This amount represents funding from GRANTOR's Economic Development Incentive Fund, Inner City Incentive Fund, and General Fund, as follows:

A. **Initial Disbursement.** GRANTOR shall disburse the following initial amounts 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 letter from a qualified financial institution confirming GRANTEE has funds available on deposit or under an existing credit facility exceeding Project Costs; (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:

1. An Economic Development Grant in the amount of TWO HUNDRED AND THIRTY-TWO THOUSAND DOLLARS (\$232,000.00) (the "Grant Funds"). Such grant is based on 1% of the Project Costs. If Project Costs are less than projected, then Grant Funds will be proportionately reduced.
2. An Economic Development Loan in the amount of THREE HUNDRED AND SEVENTY-FIVE THOUSAND DOLLARS (\$375,000.00) (the "Loan Funds"). The Loan Funds shall be converted to Grant Funds on or before five years after Completion Date if GRANTOR determines through its own performance audit that GRANTEE and GRANTEE's tenants have employed at the Project an additional ONE HUNDRED AND TWENTY-FIVE (125) FULL-TIME JOBS in accordance with Section 3(B)(iii) of this Agreement. Should GRANTOR determine that GRANTEE has failed to comply with the Full-Time Job requirement, GRANTEE shall owe to GRANTOR the sum of THREE THOUSAND DOLLARS (\$3,000.00) per Full-Time Job less than ONE HUNDRED AND TWENTY-FIVE (125). Such amount shall be payable to GRANTOR over a 10-year fully amortizing term with an annual interest rate of 3% following notice by GRANTOR to GRANTEE of its failure to meet the Full-Time Job requirement of this Agreement.
3. GRANTOR shall disburse an additional amount of THREE HUNDRED AND FIFTY THOUSAND DOLLARS (\$350,000.00) to GRANTEE upon the approval of the City of San Antonio's Historic Design and Review Commission of GRANTEE's plans to renovate and rehabilitate FORTY-FIVE THOUSAND (45,000) square feet of the Project Site.

In no case shall the Initial Disbursement exceed a cumulative total of NINE HUNDRED AND FIFTY-SEVEN THOUSAND DOLLARS (\$957,000.00). (the "Initial Disbursement"). Additionally, GRANTOR shall determine whether the evidence required in this section and provided by GRANTEE is sufficient to reasonably satisfy the preceding conditions for disbursement.

B. Property Tax Reimbursement. Subject to the terms and conditions of this Agreement, for each tax year commencing with the 2013 tax year (begins on January 1, 2013) and then annually for (i) fifteen (15) years or (ii) the disbursement by GRANTOR of an amount not to exceed ONE MILLION FIVE HUNDRED ELEVEN THOUSAND ONE HUNDRED AND FIFTY DOLLARS (\$1,511,150.00), whichever occurs first, GRANTOR shall pay to GRANTEE no later than forty-five (45) days following the submission of a tax invoice by GRANTEE indicating payment of taxes by GRANTEE, an amount equal to: (a) the actual amount of real property taxes paid by GRANTEE to GRANTOR with respect to the Project Site (including land and improvements) for that tax year, less (b) TWENTY ONE THOUSAND FOUR HUNDRED TWENTY-FOUR DOLLARS (\$21,424.00), representing the amount of real property taxes payable by GRANTEE to GRANTOR with respect to the Project Site for the 2010 tax year (the

difference between (a) and (b) being referred to herein as “Annual Property Tax Reimbursement”). It is understood that GRANTEE shall continue to pay all taxes owed on the Project Site as required by law. Taxes owed or paid shall be determined by the Bexar County Appraisal District. Prior to GRANTOR disbursing funds under this Section 4B, GRANTEE must provide to GRANTOR evidence indicating that all taxes owed on the Project Site have been paid in full for the tax year for which payment of the Annual Property Tax Reimbursement is sought, subject to GRANTEE’s right to protest taxes as permitted by law.

If, during the Term of this Agreement, 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 this Agreement shall apply.

- C. **Property Tax Reconciliation.** In no case shall disbursements made to GRANTEE under this Agreement exceed the Maximum Disbursement Amount. Should such disbursements exceed the Maximum Disbursement Amount, no further disbursements shall be due to GRANTEE and any excess funds disbursed shall be due and payable by GRANTEE to GRANTOR within ninety (90) days following written notice from GRANTOR to GRANTEE, provided such written notice is given within one (1) year following the expiration of the Term.

SECTION 5. GRANT WITHHOLD, 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 discretion, suspend this Agreement and withhold any or all payments otherwise due or requested by GRANTEE hereunder as provided in Section 7 below. If GRANTOR withholds such payments, it will notify GRANTEE in writing of its decision and the reasons therefor. 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 Construction Commencement Deadline, GRANTOR may terminate this Agreement and cause GRANTEE to forfeit all funds disbursed to GRANTEE 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 the Maximum Disbursement Amount. To exercise this right, GRANTOR must provide written notice to GRANTEE within ninety (90) days following the date of the overpayment (the “Refund Request”) informing GRANTEE that an overpayment has occurred and providing reasonable documentation of such overpayment. 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 from the non-defaulting party; 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.

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 period of time, GRANTOR may, upon written Notice of Suspension to GRANTEE, suspend this Agreement to the extent of the non-compliance and withhold further payments or reimbursements 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

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 period of

time, GRANTOR may, upon issuance to GRANTEE of a written Notice of Termination, terminate this Agreement, withhold further payments to GRANTEE and, if GRANTEE has failed to complete construction of the Project, 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 Initial Disbursement. Provided that GRANTOR has disbursed the Initial Disbursement to GRANTEE pursuant to the terms and conditions of this Agreement, if GRANTEE does not complete the Project in accordance with this Agreement on or before the Completion Date and GRANTOR terminates this Agreement as provided in this Section 8, then GRANTEE shall refund the Initial Disbursement to GRANTOR within sixty (60) calendar days after the date of termination.

D. Other Remedies Available. GRANTOR shall have the right to seek any and all remedies to which it may be entitled at law or in equity 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 remedies 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 performance timeframe for that obligation; or (2) the period required by other applicable laws and regulations.

B. GRANTEE shall, within fifteen (15) 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 books and 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 the 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 rights to access the Records shall terminate four (4) years after the performance timeframe for that obligation. 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. 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:

TO GRANTEE:

(Whether personally delivered or mailed):

- If mailed:

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

Bakery Offices, Ltd.
Attn: Robert L. Worth, Jr.
7373 Broadway #201
San Antonio, Texas 78209

- If by personal or overnight delivery:

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

C, H. Guenther & Son, Inc.
Attn: Thomas McRae
129 E. Guenther St.
San Antonio, Texas 78204

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, 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, 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 or religion.

D. Should any subcontracts or supplier agreements become necessary to carry out the requirements of this Agreement, GRANTEE covenants to include in the contract it enters into with its general contractor the obligation to give a good-faith effort to comply with GRANTOR's SBEDA Program, currently identified under Ordinance No. 100873, and as amended. Such compliance requires no documentation be submitted by GRANTEE, only a concerted effort to utilize small minority business enterprises.

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, acquisition or other corporate restructure or reorganization of GRANTEE, or to any other entity owned or controlled, or under common control, 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.

Grantee has negotiated financing for the Project through a loan agreement and a collateral assignment with a third-party lender. GRANTOR acknowledges that should Grantee default on the loan agreement or the collateral assignment, the third-party lender may require an assignment of Grantee's rights under this Agreement. Such assignment shall only be allowable upon compliance with the terms of this Section 19 and provided (i) no event of default of this Agreement has occurred and is continuing uncured by Grantee prior to such assignment; (ii) lender promptly notifies Grantor of lender's request for such assignment; and (iii) lender or other party satisfactory to GRANTOR agrees in writing to assume all obligations of Grantee hereunder.

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 possesses the legal authority to enter into this Agreement, to receive/deliver the funds authorized by this Agreement, and to perform their obligations hereunder.

B. The person or persons signing and executing this Agreement on behalf of each party or representing themselves as signing and executing this Agreement on behalf of a party, do hereby guarantee that he, she or they have been duly authorized to execute this Agreement on behalf of that party and to validly and legally bind that party to all terms, performances and provisions herein set forth.

C. Either party will 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.

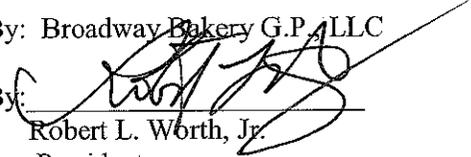
WITNESS OUR HANDS, EFFECTIVE as of December __, 2010:

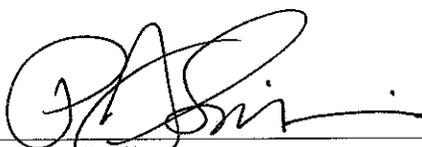
Accepted and executed in triplicate originals on behalf of the City of San Antonio pursuant to Ordinance Number 2010-0012-0009-1030, dated December 9, 2010, and _____ pursuant to the authority of its _____.

CITY OF SAN ANTONIO,
a Texas Municipal Corporation

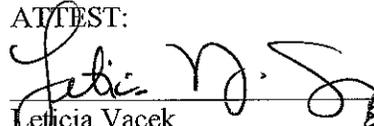
BAKERY OFFICES, LTD.,
a Texas limited partnership _____

By: Broadway Bakery G.P. LLC

By: 
Robert L. Worth, Jr.
President

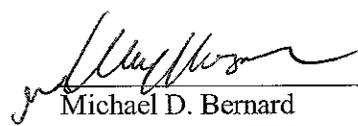

Sheryl L. Sculley
CITY MANAGER

ATTEST:


Leticia Vacek
CITY CLERK

ATTEST:

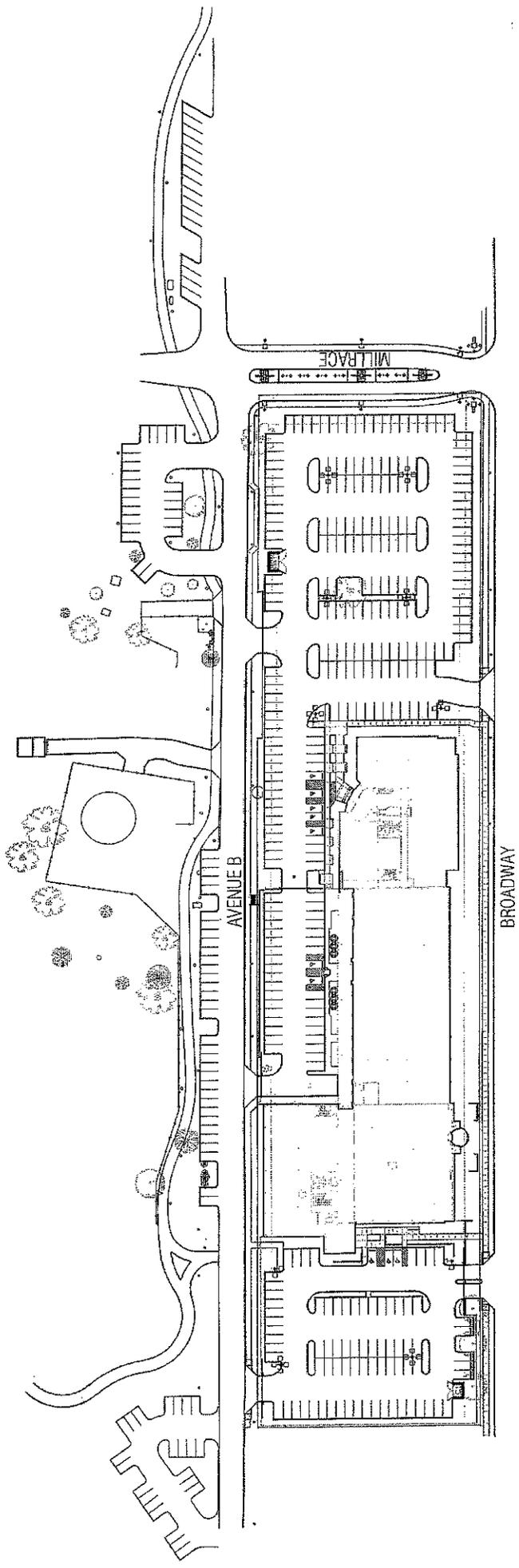
APPROVED AS TO FORM:


Michael D. Bernard
CITY ATTORNEY



ATTACHMENTS:

- I: Project Site
- II: Public Improvements



SITE PLAN SCALE 1:100

12-01-10

R.L. WORTH
WORTH
 & ASSOCIATES

2201 Broadway

Chesney
 McBride
 ASSOCIATES, Inc.

ESA

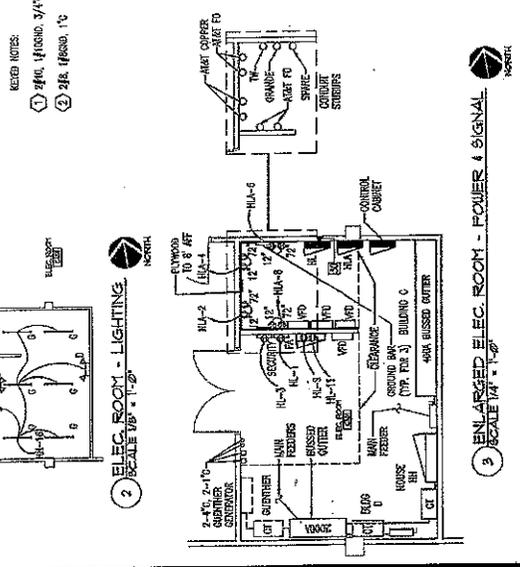
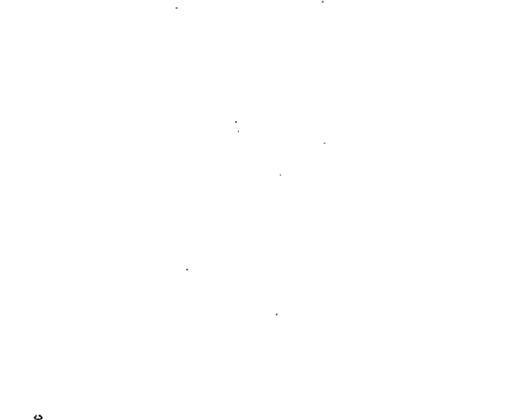
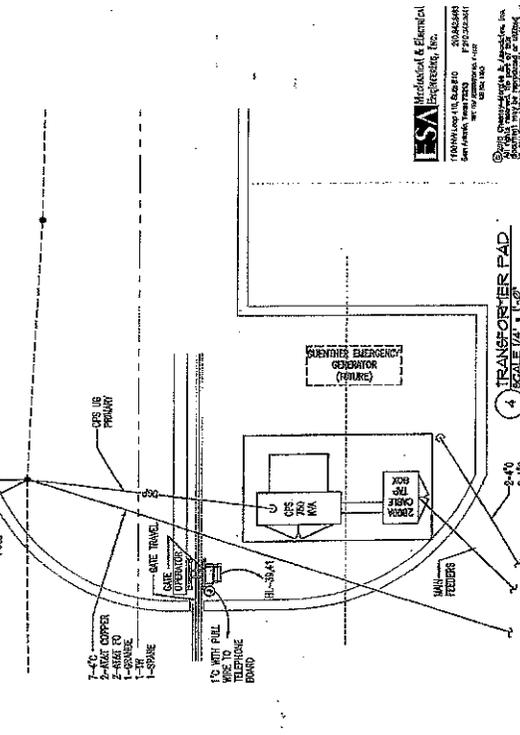
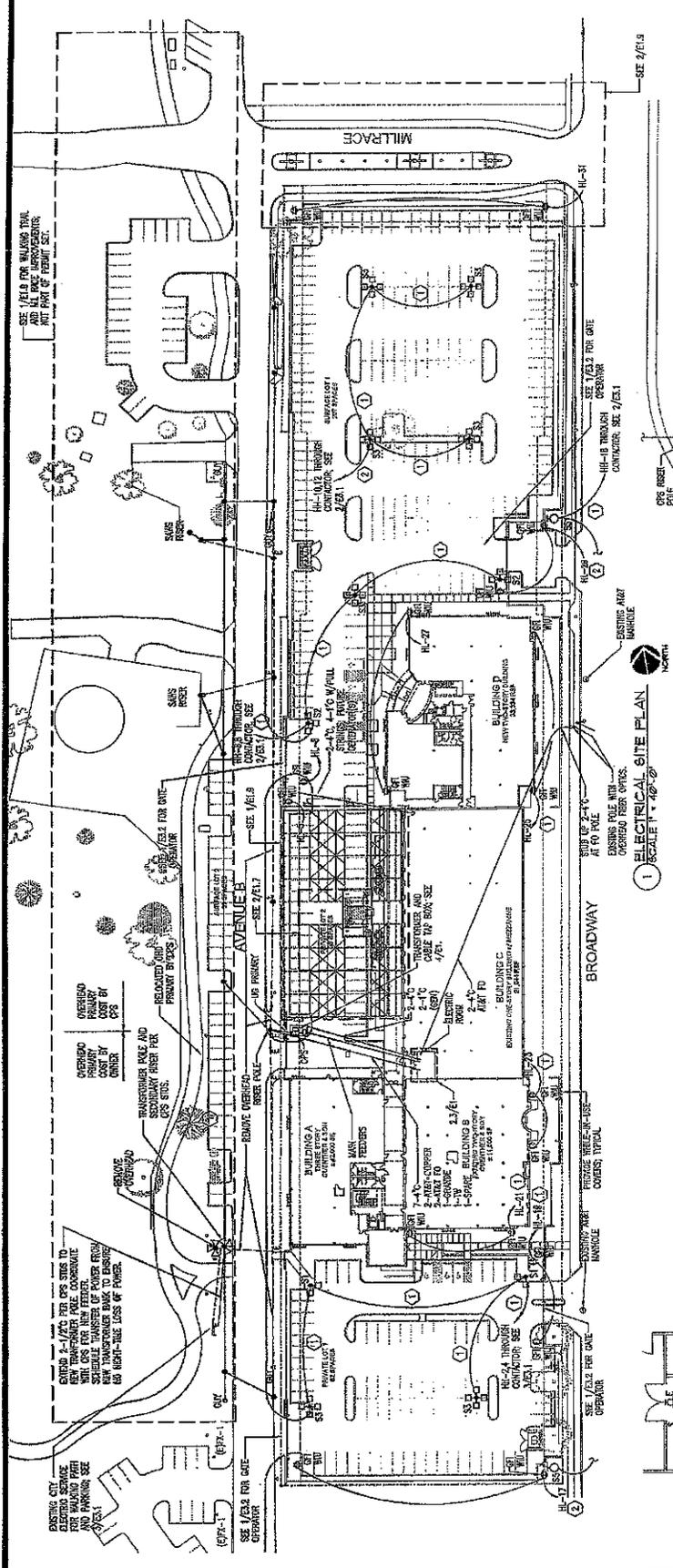
MILLRACE
 STUDIO

2201 BROADWAY
RENOVATIONS AND ADDITIONS TO THE
BUTTER KRUST BUILDING

Chesney
Morales Architects/Planners
 4001 Broadway, Suite 200 / San Antonio, Texas 78209 / 210.224.9444

PROJECT NO. 0284
 DATE: 10-18-10
 DRAWN BY: [Name]
 CHECKED BY: [Name]
 SHEET: **E1.0B**

ESA Electrical & Electronic
 Engineering, Inc.
 20043888
 1717 W. Loop West, Suite 100
 Houston, Texas 77056
 281.486.1100

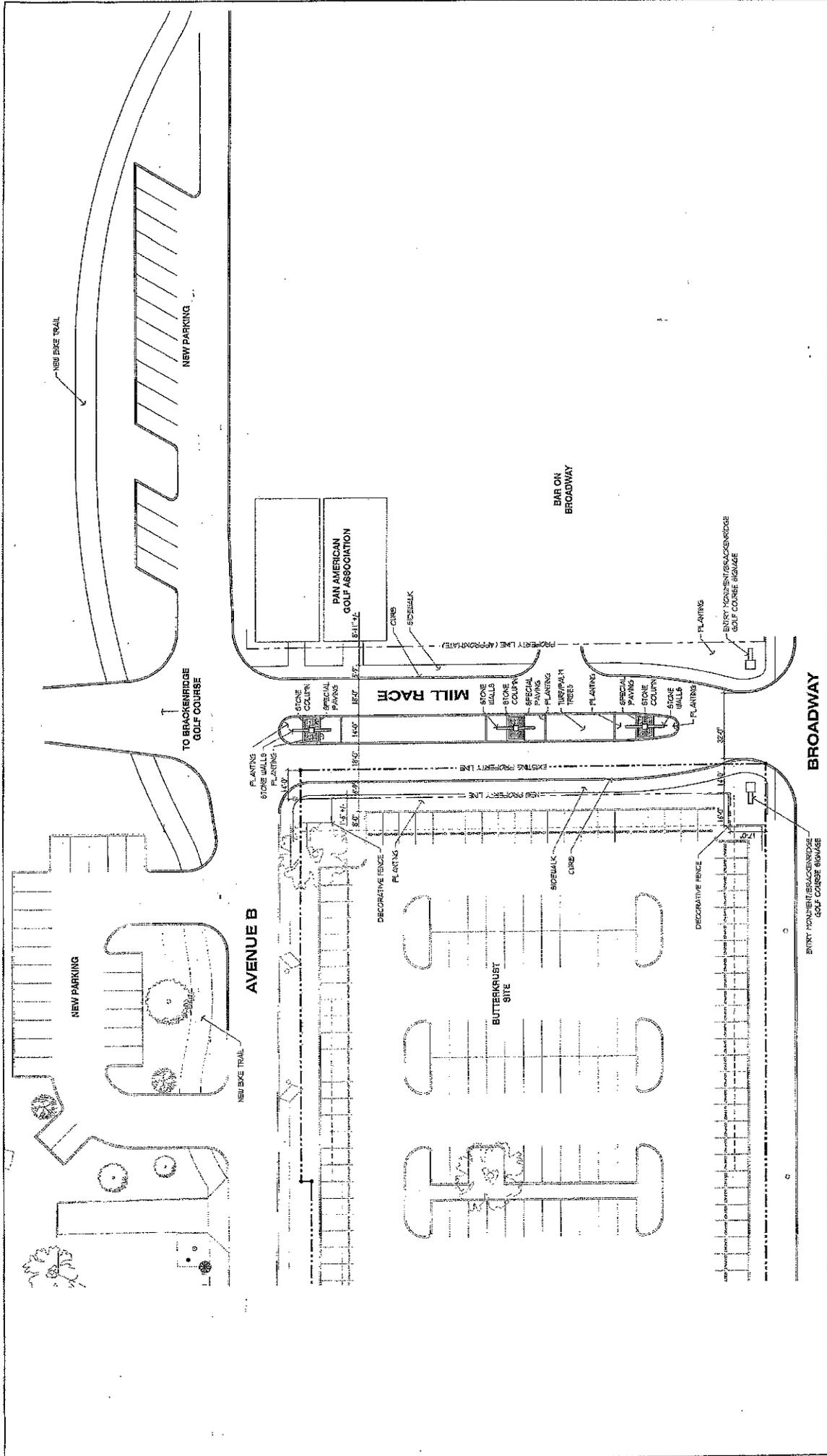


KEYED NOTES:
 ① 240V, 1PH, 3W, 3/4" C
 ② 240V, 1PH, 3W, 1" C

① ENLARGED ELEC. ROOM - LIGHTING
 SCALE 1/8" = 1'-0"

② ENLARGED ELEC. ROOM - POWER & SIGNAL
 SCALE 1/4" = 1'-0"

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NOTICE OF ADMINISTRATIVE CORRECTION

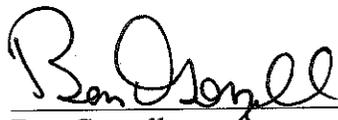
Ordinance No. 2010-12-09-1030, Sections 4, 5 and 7, contains language in regards to a Chapter 380 Economic Incentive Agreement between the City of San Antonio and R.L. Worth and Associates (now Bakery Offices, Ltd.) and authorizes a grant in the amount of up to One MILLION FIVE HUNDRED ELEVEN THOUSAND AND SIXTY DOLLARS AND 0 CENTS (\$1,511,060.00) to be paid from ad valorem taxes. This Ordinance incorrectly identifies the funding source for the annual payments to be paid out of the City's General Fund for this grant.

Therefore, this administrative correction is made in accordance with Sections 4 and 5 of this Ordinance correctly identifies the funding source as follows:

Midtown Tax Increment Reinvestment Zone ("TIRZ") #31
Fund: 29086024 Cost Center: 8002900001 General Ledger: 5201040

In addition, Section 7 of the Ordinance specifies that "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.*" Provided that correcting the source of funding from the General Fund to the Tax Increment Fund account is necessary to carry out the purpose of the ordinance, the CFO may take such action, with concurrence of the City Manager's Office, to authorize the City to utilize the TIRZ funding for the annual reimbursement for this project.

This administrative correction is made under the authority of the City's Chief Financial Officer, in concurrence with the City Attorney's Office, and has been authorized by the Board of Directors of TIRZ #31, as evidenced by the attached resolution dated the 30th of March, 2014.



Ben Gorzell
Chief Financial Officer

9/15/14

Date

Approved as to form:



Ray Rodriguez
Assistant City Attorney

7-11-14

Date

A RESOLUTION OF THE BOARD OF DIRECTORS OF TAX INCREMENT REINVESTMENT ZONE NUMBER THIRTY-ONE CITY OF SAN ANTONIO, TEXAS RATIFYING PRIOR ACTIONS RELATED TO THE APPROVAL OF SIX CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENTS.

WHEREAS, the Board of Directors previously approved Chapter 380 Economic Development Agreements for six projects, referred to as: (1) 1221 Broadway (Broadway Lofts, L.P. – Developer); (2) 1800 Broadway (Critereon Broadway, LLC – Developer); (3) The Mosaic (The Mosaic on Broadway, LLC – Developer); (4) Can Plant Apartment Project (Rio Perla Properties L.P. – Developer); (5) Pearl Parkway North and South (Rio Perla Properties L.P. – Developer); and (6) Butterkrust Bakery (Bakery Offices, Ltd. – Developer) within Tax Increment Reinvestment Zone Number Thirty-One, known as the Midtown TIRZ (the “TIRZ”); and

WHEREAS, the purpose of the Board’s approval was to incentivize the Developers of each project to undertake and complete the projects within the TIRZ; and

WHEREAS, it was intended by the TIRZ Board to fund the projects through the TIRZ Tax Increment Fund; **NOW THEREFORE:**

BE IT RESOLVED BY THE TAX INCREMENT REINVESTMENT ZONE NUMBER THIRTY ONE, THE MIDTOWN TIRZ:

SECTION 1. The recitals set out above are hereby adopted in their entirety.

SECTION 2. The TIRZ Board ratifies the prior intent to fund the projects (the “Projects”) listed in the recitals adopted in Section 1 through the Tax Increment Reinvestment Zone Number Thirty-One, known as the Midtown TIRZ.

SECTION 3. The TIRZ Board authorizes the City of San Antonio to commit up to:

- (1) \$1,937,691.00 for the 1221 Broadway project (Broadway Lofts, L.P. – Developer);
- (2) \$2,045,778.00 for the 1800 Broadway project (Critereon Broadway, LLC – Developer);
- (3) \$1,357,656.00 for The Mosaic project (The Mosaic on Broadway, LLC – Developer);
- (4) \$1,724,318.00 for the Can Plant Apartment project (Rio Perla Properties L.P. – Developer);
- (5) \$2,918,450.00 for the Pearl Parkway North and South project (Rio Perla Properties L.P. – Developer); and
- (6) \$1,511,060 for the Butterkrust Bakery project (Bakery Offices, Ltd. – Developer) in tax increment to the Projects through a Chapter 380 Economic Development Agreement with the Developers of the six projects.

PASSED, APPROVED and ADOPTED this 30th day of May, 2014 to be effective immediately.



Louis J. Fox
Presiding Officer, Midtown TIRZ

BUTTERKRUST BAKERY

AN ORDINANCE **2010-12-09-1030**

APPROVING AN ECONOMIC DEVELOPMENT GRANT AGREEMENT IN THE AMOUNT OF \$2,468,150.00 WITH R.L. WORTH AND ASSOCIATES; AND APPROVING A SAWS FEE WAIVER IN AN AMOUNT UP TO \$375,000.00 FOR THE REDEVELOPMENT OF THE BUTTERKRUST BAKERY.

* * * * *

WHEREAS, R.L. Worth and C.H. Guenther are proposing a 107,644 square foot commercial redevelopment of the ButterKrust Bakery located on Broadway in District 2 within the Midtown TIRZ (the "Project"); and

WHEREAS, of the 1707,644 square feet, 53,000 square feet will be leased to CH Guenther, which will retain and relocate 125 headquartered jobs to the center city from its downtown operation, allowing for expansion at the downtown location; and

WHEREAS, the Project proposes \$1,511,150.00 in public improvements to include Avenue B parking and trail enhancements, improvements to Milhrace Avenue, facade improvements to the Pan American Gold Association building on Milhrace, and the burial and/or relocation of utilities; and

WHEREAS, the total Project cost is \$2,300,000.00 and will commence construction in January 2011; and

WHEREAS, the ButterKrust Bakery is located within the Inner City Reinvestment / Infill Policy Target Area (ICRIP) and, based on the Project's eligibility, staff is recommending \$232,000.00 in San Antonio Water System (SAWS) impact fee waivers; and

WHEREAS, staff has proposed a \$2,468,150.00 incentive package which also includes a \$232,000.00 grant from the Economic Development Incentive Fund (EDIF), a \$350,000.00 grant for the adaptive reuse of approximately 45,000 square feet of the original ButterKrust Bakery and a forgivable loan in the amount of \$375,000.00 for an additional 125 jobs over CH Guenther's added jobs, both payable from the \$2 Million Inner City Economic Development Incentives in the FY 2011 General Fund Adopted Budget; and

WHEREAS, the City will perform a job audit of the Project after the building has been open for 5 years and for every additional job up to 125 jobs, \$3,000.00 of the loan will convert to a grant, with any remaining loan funds to be repaid over a ten-year term with 3% interest, beginning in year six (6); and

WHEREAS, as part of the total incentive package, staff is also recommending an additional economic development grant in an amount not to exceed \$1,511,150.00, to be disbursed annually from ad valorem taxes paid to the City over no more than 15 years, sourced from the tax increment received from the Project improvements; and

WHEREAS, on Tuesday, October 19, 2010, the Midtown TIRZ Board approved a resolution that authorized the tax increment earned from the Project to remain in the City's General Fund for the term of the grant and kept the Project location within the TIRZ; NOW THEREFORE:

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

SECTION 1. The City Council approves an Economic Development Grant Agreement in the amount of \$2,468,150.00 with R.L. Worth and Associates, a copy of which is included as Attachment I in substantially final form.

SECTION 2. City Council also approves a SAWS impact fee waiver in an amount up to \$232,000.00 for the redevelopment of the Butterkrust Bakery.

SECTION 3. Funding in the amount of \$957,000.00 for this Ordinance is available as part of the Fiscal Year 2011 Budget per the table below.

Amount	Cost Center	General Ledger	Fund
\$232,000.00	1604010001	5201040	29059000
\$350,000.00	3401010003	5201040	11001000
\$375,000.00	3401010003	5201040	11001000
Total Amount:			
\$957,000.00			

SECTION 4. The amount of \$1,511,060.00 is appropriated in fund 29086024, TIRZ Midtown #31, Internal Order 390000001284. From 29086024 to 11001000, SAP GL account 6102100 - Interfund Transfer Out. The amount of \$1,511,060.00 is authorized to be transferred to fund 11001000. The amount of \$1,511,060.00 to be transferred is contingent upon the project's tax increment over a 15-year period which will be used to reimburse Fund 29086024.

SECTION 5. Funds in the amount of \$1,511,060.00 are authorized to be received in fund 11001000 through Internal Order 311090001284. From 29086024 to 11001000, SAP GL account 6101100 - Interfund Transfer In.

SECTION 6. Payment not to exceed the budgeted amount is authorized to R. L. Worth and Associates and should be encumbered with a purchase order.

SECTION 7. 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

NOTICE OF ADMINISTRATIVE CORRECTION SUPPORTING DOCUMENTATION

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

SECTION 8. This Ordinance shall be effective immediately upon the receipt of at least eight (8) affirmative votes. If less than eight (8) affirmative votes are received, then this Ordinance shall be effective on the tenth (10th) day after passage.

PASSED AND APPROVED this 9th day of December, 2010.


MAYOR
Julian Castro

ATTEST:

Katelyn M. Yacek, City Clerk

APPROVED AS TO FORM:

Michael D. Bernard, City Attorney

List Edit Copy Move Settings System Help

FM Derivation Report

Fund = 28086024
Cost Center = 1 to 9999999999
No of Records= 1

Cost Center	Description	Fund Center	Fund Center Text	Functional Area	Functional Area Text	Fund
8002800001	TIRZ MIDTOWN #31	8002800000	TIRZ MIDTOWN #31	800001000001	NON-DEPARTMENTAL	280860