STATE OF TEXAS *
*
COUNTY OF BEXAR *

PROJECT MANAGEMENT CONTRACT

HOUSTON STREET LINKAGE

This Agreement for Project Management services ("AGREEMENT") for the construction of the public improvement, described as the "Project" below, is made between the CITY OF SAN ANTONIO, a municipal corporation of Bexar County, Texas (hereinafter called "CITY"), and STREET RETAIL SAN ANTONIO, LP, a Delaware limited partnership, (hereinafter called "DEVELOPER").

WITNESSETH:

WHEREAS, the City, in Ordinance No. 90969, passed and approved on December 9, 1999, designated an area in the central business district as a tax increment reinvestment zone to be known as the "Reinvestment Zone Number Nine, City of San Antonio, Texas"; and

WHEREAS, the City created the Zone to support redevelopment and public infrastructure improvements for the Houston Street/Redevelopment Projects, including the Houston Street Linkage to River Level (the "Project"); and

WHEREAS, the City has entered into a Development Agreement (the "Development Agreement") with Developer, pursuant to authority granted in Ordinance 91539, passed and approved March 30, 2000, to undertake the construction of certain public improvements in a manner and as provided therein, a copy of which is attached hereto and incorporated herein for all purposes as Exhibit "A"; and

WHEREAS, the Development Agreement contemplates that, contingent upon the availability of funding for the Houston Street Linkage, the City would cause the Project to be constructed and retain DEVELOPER as project manager therefor; and

WHEREAS, funding for the Project has been obtained by and through an Urban Development Action Grant ("UDAG"); and

WHEREAS, both the CITY and DEVELOPER now desire to implement the applicable provisions of the Development Agreement by setting out the manner and means by which the Project will be constructed with said funding;

NOW THEREFORE, the Parties, in consideration of the foregoing, and the terms and conditions herein contained, do hereby agree as follows:

I. TERM

1.1 Except as otherwise provided for pursuant to the provisions hereof, this AGREEMENT shall commence immediately upon its execution and shall terminate upon completion of the Project, which shall occur when DEVELOPER has fulfilled its obligations set out under Article VI of this AGREEMENT.

II. PARTY REPRESENTATIVES

2.1 Unless written notification by DEVELOPER to the contrary is received by the CITY, John Tschiderer shall be DEVELOPER's designated representatives responsible for the management of all contractual matters pertaining to this AGREEMENT.

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2.2 The Director of the City's Economic Development Department (hereafter "Director") shall be CITY's representative responsible for the administration of this AGREEMENT.

2.3 Communications between the CITY and DEVELOPER shall be directed to the designated representative of each by the manner and means set out in Paragraph 33.1 of this AGREEMENT.

III. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

3.1 DEVELOPER understands that funds provided to it pursuant to this AGREEMENT are funds, which have been made available to CITY through the United States Department of Housing and Urban Development ("HUD") in the form of UDAG funding. DEVELOPER therefore, assures and certifies that it will comply with all State Laws, Regulations and Administrative Directives applicable to the Project, to the extent applicable to the obligations of DEVELOPER hereunder, as well as all Federal Laws, Regulations and Administrative Directives applicable to UDAG, including but not limited to the Davis-Bacon Act, as amended (40 U.S.C. 276a), the Americans with Disabilities Act and the requirements of the UDAG as contained in the Grant Agreement, as amended, a copy of which is attached hereto and incorporated herein as Exhibit "B", to the extent applicable to the obligations of DEVELOPER hereunder. DEVELOPER understands, however, that said State and Federal Laws and Regulations in no way constitute a complete compilation of all duties imposed on DEVELOPER by law or administrative ruling, or narrow the standards which DEVELOPER must follow. CITY acknowledges that DEVELOPER is not being paid any HUD funding under this Agreement but is merely being reimbursed for funds it has spent on the CITY's behalf as Project Manager. Entering into this Agreement does not cause DEVELOPER to be a contractor or subcontractor under the UDAG.

3.2 The Project being funded under this AGREEMENT is a public improvement and, to the extent applicable, DEVELOPER agrees to and shall utilize a Sealed Bid or a Request for Proposal ("RFP") process to award any contract(s) as would be required under Chapter 252 of the Texas Local Government Code ("Code") as modified by Section 212.071 et seq. of the Code as if the CITY was constructing the Project. This includes all applicable notice requirements, the selection process and the bonding requirements of any contractor, such as payment and performance bonds. The Parties agree that for each contract, the City Clerk shall receive all bids, open same and turn them over to DEVELOPER.

3.3 DEVELOPER shall observe and comply with all city, state and federal laws, regulations, ordinances and codes affecting DEVELOPER's operations under this AGREEMENT.

IV. LEGAL AUTHORITY

4.1 DEVELOPER represents, warrants, assures and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this AGREEMENT and to perform the responsibilities herein required.

4.2 The signer of this AGREEMENT for DEVELOPER represents, warrants, assures and guarantees that he or she has full legal authority to execute this AGREEMENT on behalf of DEVELOPER and to bind DEVELOPER to all terms, performances and provisions herein contained.

4.3 CITY represents, warrants, assures and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this AGREEMENT and to perform the responsibilities herein required.

4.4 The signer of this AGREEMENT for CITY represents, warrants, assures and guarantees that he or she has full legal authority to execute this AGREEMENT on behalf of CITY and to bind CITY to all terms, performances and provisions herein contained.

4.5 In the event that a dispute arises as to the legal authority to enter into this AGREEMENT of either the DEVELOPER or CITY or the person signing on behalf of DEVELOPER or CITY, the other party shall have the right, at its option, to either temporarily suspend or permanently terminate this AGREEMENT.

V. <u>CONSIDERATION</u>

5.1 DEVELOPER, at its sole cost and expense, agrees to convey to CITY perpetual public easements in the form of a dedication as described and shown on the plat and further delineated by metes and bounds description as set out and attached hereto as Exhibit "C" (the "dedication"), within 90 days of the completion of the Project as follows:

(A) The DEVELOPER agrees to provide at its expense a plat showing the metes and bounds description as well as a site survey describing known utility locations and legal description. DEVELOPER shall be responsible for the removal and handling of all hazardous materials, if any, to the Texas Natural Resource Commissions Residential Standard, prior to conveyance. These responsibilities include, but are not limited to, removal, transportation, manifesting, and legal disposal of any hazardous materials such as lead, lead paint, asbestos or asbestos-related products as may be required in connection with the Project. CITY may supply a separate consultant to monitor the activities of any abatement contractor hired by DEVELOPER, if hazardous materials are encountered on the Project, and DEVELOPER agrees to cooperate and keep the CITY, its consultants, agents and representatives informed of activities and progress of the abatement processes. In addition, the DEVELOPER shall provide to the CITY a copy of any soils reports, subsurface investigation reports and environmental reports it may have in its possession, if any.

(B) The dedication of the public easement will be superior to all liens and encumbrances against the property covered by the dedication easement (the "Easement Property"), other than liens for ad valorem taxes for the current year, and will be in form and content reasonably acceptable to CITY. The DEVELOPER will retain from the definition of the Easement Property the air rights which are located fifteen (15) feet above the surface of the Easement Property. The dedication will grant to the CITY a perpetual easement and right of way for pedestrian access to, from and across the Easement Property, with full and free right and liberty for the CITY, in common with all members of the public for all purposes, to pass and re-pass along and over the Easement Property, to provide access to and from the public streets and sidewalks abutting or adjoining the Easement Property, to gain access to and from the structures adjoining or abutting the Easement Property, including the right of the CITY to temporarily close access to the Easement Property as necessary for such purposes, emergencies, repairs and other related purposes, subject to the DEVELOPER's retained rights to utilize portions of the Easement Property for dining, food and beverage (alcoholic and non-alcoholic) service, retail sales and other uses in accordance with Governmental Rules and such other uses as may be approved by CITY, all in accordance with the mutually acceptable easement agreements negotiated between CITY and DEVELOPER.

5.2 Except as modified herein, paragraph 9.10 of the Development Agreement is in full force and effect.

5.3 The dedication of the easement shall provide that the owner of the subservient estate and the owner of the appurtenant property (hereinafter identified and described) will observe and perform the following obligations, covenants and duties: (a) upon completion of all improvement, to maintain, repair and insure, at grantor's sole cost and expense, all improvements now or hereafter located on the easement

property (other than improvements constructed by CITY after the effective date of the easement agreement), (b) to remit to CITY the portion of the revenue received from the use or operation of the easement property (including without limitation any reimbursements from third parties) which exceeds the maintenance, repair, utilities, taxes, insurance and other costs incurred in connection with the easement property as provided in the easement agreement; provided however, CITY acknowledges it is not to receive any portion of amounts paid to DEVELOPER pursuant to that certain ninety-nine (99) year lease entered into between the DEVELOPER and the owner(s) of the Valencia Hotel, (c) to pay all taxes assessed against the easement property by all taxing authorities, (d) to pay all utility charges associated with the easement property, (e) to fully comply with all Governmental Rules in connection with the easement property, and (f) UPON COMPLETION OF ALL IMPROVEMENTS, TO FULLY INDEMNIFY, HOLD HARMLESS AND DEFEND CITY FROM AND AGAINST ANY AND ALL CLAIMS FOR PERSONAL INJURY (INCLUDING DEATH) AND PROPERTY DAMAGE RELATED TO THE USE OF THE EASEMENT PROPERTY AND ALL IMPROVEMENTS THEREON. For the purposes of such easement agreement, the "owner of the appurtenant property" with respect to the Houston Street Linkage will be the owner of the real property upon which the Valencia Hotel currently stands. This Section 5.3 shall survive termination of this AGREEMENT.

VI. PERFORMANCE BY DEVELOPER

6.1 DEVELOPER, in accordance and compliance with the terms, provisions and requirements of this AGREEMENT, shall manage, perform and provide all of the activities and services set forth in the Work Statement attached hereto and incorporated herein for all purposes as Exhibit "E".

6.2 Modifications or alterations to Exhibit "E" may only be made upon the prior written approval of the Director and DEVELOPER.

6.3 DEVELOPER agrees and understands that all construction work shall be performed by Contractor(s) under separate Construction Contracts.

6.4 DEVELOPER understands and agrees that time is of the essence, and DEVELOPER agrees to undertake commercially reasonable efforts within the budgetary limitations described in Article VII of this AGREEMENT to cause the Project to be substantially completed within a reasonable time period that is contemporaneous with the completion of construction of the adjacent buildings.

VII. FUNDING AND DOCUMENTATION OF PROJECTS

7.1 Funding of the PROJECT shall be as follows:

(A) In consideration of DEVELOPER's satisfactory and efficient performance under this AGREEMENT, CITY agrees to reimburse DEVELOPER for all allowable expenses as defined in Article IX of this Agreement subject to the "CAP" as hereinafter defined. Reimbursement is subject to any and all limitations and provisions set forth in this AGREEMENT.

(B) Notwithstanding any other provisions of this AGREEMENT, the total of all payments and other obligations made or incurred by CITY hereunder shall not be in excess of the sum of $974,000 (the "Cap"). DEVELOPER shall endeavor to design and bid the Project with alternatives, as approved in writing by the CITY, to allow for adequate cost adjustments, contingencies and retainage so as to avoid exceeding the Cap. Nothing herein shall prohibit a design in excess of the Cap and the DEVELOPER understands that any amounts in excess of the Cap shall be treated as an Additional Public Improvement under Section 7.4 of the

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Development Agreement all of which shall be eligible for reimbursement from the Tax Increment Fund.

(C) It is expressly understood and agreed by CITY and DEVELOPER that CITY's obligations under this Article are contingent upon the availability of funds in the form of an Urban Development Action Grant ("UDAG"). Should availability of proceeds be less than anticipated or for any reason become unavailable for use in the Projects, CITY shall notify DEVELOPER in writing within a reasonable time after such fact has been determined and DEVELOPER may, at its option, terminate this AGREEMENT and either continue construction of the Project under the terms of the Development Agreement or reduce the amount of its obligation accordingly.

(D) Notwithstanding any other provision of this AGREEMENT, the Parties agree that the Work Statement attached as Exhibit "E" may be amended and the design of the Project may be changed with the consent of the DEVELOPER and the Director as needed to maintain the expenditure Cap on the Project.

(E) It is expressly understood by CITY and DEVELOPER that this AGREEMENT in no way obligates CITY's general fund monies or any other monies or credits of CITY.

(F) CITY shall not be liable for any DEVELOPER cost, or portion thereof, which:

(i) was incurred subsequent to the termination date of this AGREEMENT;

(ii) was not incurred by DEVELOPER in accordance with the terms of this AGREEMENT, including all exhibits attached hereto;

(iv) has not been billed to CITY within forty-five (45) calendar days following termination of this AGREEMENT; or

(v) is not an allowable cost as defined in Article IX of this AGREEMENT.

(H) CITY shall not be liable for any DEVELOPER cost, or portion thereof, which is or was incurred in connection with an activity of DEVELOPER where:

(i) Prior written authorization from CITY is required either under this Agreement or by law for the activity and such authorization is not procured; or

(ii) CITY has requested, in writing, that DEVELOPER furnish data concerning an activity prior to proceeding further therewith and DEVELOPER nonetheless proceeds without first submitting the data and receiving CITY approval thereof.

(I) CITY shall not be obligated or liable under this AGREEMENT to any party, other than DEVELOPER, for payment of any monies or provisions of any goods or services.

7.2 (A) Within ninety (90) days after substantial completion of any construction phase, DEVELOPER agrees to and shall:

(i) Notify CITY in writing upon the substantial completion of construction whereupon CITY will promptly inspect, as required by the Development Agreement, the completed work to determine if construction has been (1) completed in a satisfactory

and workmanlike manner, and (2) substantially completed in accordance with the plans and specifications for such work approved by CITY.

(ii) Submit all permits, if applicable, obtain a Certificate of Occupancy and submit a copy of each of these documents to the CITY before final allocation of funds to DEVELOPER.

(iii) Submit "as-built" drawings to CITY.

(B) DEVELOPER will require its contractor(s) and consultant(s) to be covered by insurance, as applicable, in the same types and amounts as that set out in and required of DEVELOPER under Article XVII of this AGREEMENT and will require its contractor(s) and any subcontractors to be covered by payment and performance bonds at no additional cost to CITY.

VIII. RECEIPT, DISBURSEMENT AND ACCOUNTING OF FUNDS BY DEVELOPER

8.1 DEVELOPER understands and agrees that it shall maintain a separate numbered account for the receipt and disbursement of all funds received from CITY pursuant to this AGREEMENT. DEVELOPER further agrees that:

(A) Such account shall contain only those funds received pursuant to this AGREEMENT and that no other funds shall be mingled therewith;

(B) All checks and withdrawals from such account shall have itemized documentation in support thereof;

(C) Such account shall be maintained in a financial institution having federal deposit insurance coverage; and

(D) Upon DEVELOPER's written request and solely within the discretion of CITY, an alternative accounting mechanism may be permitted, provided such alternative adheres at all times to generally accepted accounting principles.

8.2 Regarding method of payment, CITY and DEVELOPER agree as follows:

(A) DEVELOPER shall deliver a Requisition for Payment, in a form reasonably acceptable to CITY, to Director on a monthly billing cycle, with the prior month's Billing Package received no later than the fifteenth (15th) day of each month;

(B) Upon receipt of and approval by CITY of each of DEVELOPER's Requisition for Payment, CITY shall pay to DEVELOPER, on or before the 30th day after receipt, an amount equal to CITY's obligation not previously paid pursuant to Article IX of this Agreement by CITY, subject to deduction for any costs not allowable pursuant to Article IX of this Agreement. Any other provision of this AGREEMENT notwithstanding, the provisions of Chapter 2251 of the Texas Government Code, as amended, shall control payments made under this AGREEMENT.

(D) DEVELOPER's financial management system shall provide for an adequate procedure to minimize the time elapsed between CITY's payment to DEVELOPER and DEVELOPER's disbursement of funds.

8.3 Within ten (10) working days of CITY's written request therefor, DEVELOPER shall refund to CITY any sum of money paid by CITY to DEVELOPER later determined to have resulted in overpayment to DEVELOPER;

8.4 Upon termination of this AGREEMENT, should any expense or charge for which payment has been made to DEVELOPER by CITY and then subsequently disallowed or disapproved as a result of any auditing or monitoring by HUD, DEVELOPER shall refund such amount to CITY within ten (10) business days of CITY's written request therefor wherein the amount disallowed or disapproved shall be specified.

8.5 Utilizing a format agreed to by the Parties, a "Close-Out Package", together with a final expenditure report, for the period commencing on the date of DEVELOPER's last invoice requesting reimbursement of funds pursuant to this AGREEMENT, shall be submitted by DEVELOPER to CITY within ninety (90) business days following substantial completion of the Project.

IX. ALLOWABLE COSTS

9.1 Costs shall be considered allowable only if approved and incurred directly and specifically in the performance of and in compliance with this AGREEMENT as set forth on DEVELOPER's budget in Exhibit "F". It is expressly agreed that DEVELOPER may move funds from one line item into another within the budget without the need to obtain the consent of the CITY.

X. FURTHER REPRESENTATIONS, WARRANTIES AND COVENANTS

10.1 DEVELOPER further represents and warrants that:

(A) All information, data or reports heretofore or hereafter provided to CITY, are and shall be complete and accurate, in all material respects, as of the date shown on the information, data or report;

(B) No litigation or proceedings are presently pending or, to DEVELOPER'S knowledge, threatened against DEVELOPER; and

(C) None of the provisions contained herein contravene or in any way conflict with the authority under which DEVELOPER is doing business or with the provisions of any existing indenture or agreement of DEVELOPER.

XI. MAINTENANCE OF RECORDS

11.1 DEVELOPER agrees to maintain records that will provide accurate, current, separate, and complete disclosure of the status of any funds received pursuant to this AGREEMENT. DEVELOPER further agrees:

(A) That maintenance of said records shall be in compliance with all terms, provisions and requirements of this AGREEMENT; and

(B) That DEVELOPER's record system shall contain sufficient documentation to provide in detail support and justification for each expenditure.

11.2 DEVELOPER agrees to retain, for the period of four (4) years, all books, records, documents, reports, and written accounting policies and procedures pertaining to the expenditures of funds under this AGREEMENT. This paragraph shall survive termination of this AGREEMENT.

11.3 Nothing in this Article shall be constructed to relieve DEVELOPER of:

(A) Responsibility for retaining accurate and current records which clearly reflect the services provided under this AGREEMENT; and

(B) Fiscal accountability and liability pursuant to this AGREEMENT and any applicable rules, regulations and laws.

XII. ACCESSIBILITY OF RECORDS

12.1 At any reasonable time during normal business hours and as often as CITY or HUD may deem necessary, DEVELOPER agrees to and shall make available, at CITY'S principal place of business, copies of all of its records directly relating to this AGREEMENT to CITY, HUD or any authorized representative of either for the purpose of auditing, examining, and making excerpts and/or copies of same. DEVELOPER's records shall include, but shall not be limited to, the following: construction and other contracts, bids received, payroll, personnel, employment records, Board minutes, and invoices directly relating to this AGREEMENT. Upon completion of construction, DEVELOPER shall provide CITY with a complete copy of all records it has relating to this Project and Agreement.

XIII. PROGRESS/PERFORMANCE RECORDS AND REPORTS

13.1 As often and in such form as CITY may reasonably require, DEVELOPER shall furnish to CITY such progress/performance records and reports as reasonably deemed by CITY or HUD as pertinent to matters covered by this AGREEMENT.

13.2 At a minimum, DEVELOPER agrees to and shall keep monthly performance records and reports, which shall be submitted to CITY by DEVELOPER every calendar quarter and no later than the thirtieth (30th) day of the month following the end of the quarter. DEVELOPER agrees to and shall cooperate with CITY in providing and keeping the reports and records in a format reasonably acceptable to CITY. Any additional reports shall be furnished at CITY's expense.

XIV. MONITORING AND EVALUATION

14.1 CITY may perform on-site monitoring of DEVELOPER's performance pursuant to the terms of this AGREEMENT.

14.2 DEVELOPER agrees that CITY may carry out monitoring and evaluation activities so as to ensure compliance by DEVELOPER with this AGREEMENT, including the design and construction documents and with all other laws, regulations and ordinances related to the performance hereof.

14.3 DEVELOPER agrees to cooperate fully with CITY in the development, implementation and maintenance of record-keeping systems and to provide CITY with any data reasonably determined by CITY to be necessary for its effective fulfillment of its monitoring and evaluation responsibilities.

14.4 DEVELOPER agrees that it will cooperate with CITY in such a way so as not to obstruct or delay City it its monitoring of DEVELOPER's performance and that it will designate one of its staff to coordinate the monitoring process as requested by CITY staff.

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XV. INSURANCE

15.1 DEVELOPER shall maintain such Workers' Compensation, Unemployment Compensation or Disability Benefits insurance coverages as may be required by law.

15.2 On or before the date of this AGREEMENT, DEVELOPER shall furnish an original completed Certificate of Insurance to the City Clerk and the Director, which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limit, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The original certificate(s) must have the agent's original signature, including the signer's company affiliation, title and phone number and be mailed directly to the CITY. The CITY shall have no duty to pay or perform under this AGREEMENT until such certificate shall have been delivered to the City Clerk and the Director, and no officer or employee shall have authority to waive this requirement, except the City's Risk Manager. CITY acknowledges that it has received from DEVELOPER certificates satisfying the foregoing requirements as of the date of execution of this Agreement by the DEVELOPER.

15.3 After the initial nine months of this AGREEMENT, CITY reserves the right to and may review the insurance requirements of this Article during the effective period of this AGREEMENT and any extension or renewal of the term thereof and to modify insurance coverage and their limits when deemed necessary and prudent by the City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this AGREEMENT, but in no instance will CITY allow modification whereupon CITY may incur increased risk. DEVELOPER shall pay any additional cost incurred as a result of having to obtain such additional or different insurance coverages.

15.4 DEVELOPER shall obtain and maintain in full force and effect for the duration of this AGREEMENT, and any extension hereof, at DEVELOPER's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company or otherwise acceptable to CITY, in the following types and amounts:

	TYPE	**AMOUNT**
(A)	Worker's Compensation Employer's Liability	Statutory $1,000,000/$1,000,000/$1,000,000
(B)	Commercial General (Public) Liability-to include but not be limited to, coverage for the following where the exposure exists: (1) Premises/Operations (2) Independent Contractor's Liability (3) Products and Completed Operations (4) Personal Injury (5) Contractual Liability (6) Explosion, Collapse, Underground (7) Fire Damage Legal Liability (8) Broad-Form Property Damage Liability	Combined Single Limit for Bodily Injury or Property Damage of $1,000,000 per occurrence, with an aggregate of $2,000,000
(C)	Business Automobile Liability Insurance-to	Combined Single Limit for Bodily Injury

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include coverage of:

(1) Owned/Leased Automobiles
(2) Non-Owned Automobiles
(3) Hired Automobiles

and Property Damage of $1,000,000 per occurrence or its equivalent

(D) Commercial Crime (deductibles of $10,000 employee honesty and $5,000 fraud)

$974,500 with the fidelity portion to be written on a "blanket" basis to cover all employees with access to the funds received under this AGREEMENT, including new hires

DEVELOPER may provide the insurance required under this AGREEMENT pursuant to a blanket policy covering other properties that it owns.

15.5 CITY shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by CITY.

15.6 DEVELOPER agrees that with respect to the above-required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

- Name CITY as an additional insured as respects operations and activities of, or on behalf of, the named insured performed under contract with CITY, with the exception of the workers compensation and professional liability policies;
- DEVELOPER's insurance shall be deemed primary with respect to any insurance or self insurance carried by the CITY for liability arising pursuant to matters under this AGREEMENT.
- Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of CITY;

DEVELOPER shall notify CITY in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty (30) days prior to the change, or ten (10) days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to CITY at the following address:

City of San Antonio
CITY Clerk's Office
P.O. Box 839966
San Antonio, Texas 78283-3966

City of San Antonio
Economic Development Department
P.O. Box 839966
San Antonio, Texas 78283-3966

15.7 If DEVELOPER fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, CITY may determine DEVELOPER to be in default of this AGREEMENT.

15.8 Prior to undertaking or causing to be undertaken construction of improvements and/or repairs, maintenance, alterations, relocation or reconstruction work, DEVELOPER shall procure and maintain or cause to be procured and maintained by the contractor(s) in full force and effect during the term of such construction contract, (1) builder's risk insurance for the replacement cost of the improvements being constructed; (2) commercial general (public) liability insurance adequate to fully protect CITY and

DEVELOPER from and against any and all liability for death of, or injury to, persons, or damage to property, caused in or about, or by reason of, the construction of said improvements; (3) workers' compensation and employer's liability insurance; (4) professional liability insurance for architects and engineers; and (5) Payment/Performance Bond in the amount of the contract. In addition, payment and performance bonds naming the CITY as indemnitee shall be required covering any contractors or subcontractors. Should the size and scope of a contract for such construction work be limited in nature, the DEVELOPER may request, in writing to the Director, a waiver of the requirements in this paragraph 15.8; however; a waiver may only be granted by CITY's Risk Manager. In any event, the CITY's Risk Manager's decision shall be final.

15.9 Nothing herein contained shall be construed as limiting in any way the extent to which DEVELOPER may be held responsible for payments of damages to persons or property resulting from DEVELOPER's or any approved subcontractor's performance of the work covered under this AGREEMENT.

XVI. INDEMNIFICATION

16.1 DEVELOPER covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, and representatives of the CITY, individually or collectively, to the same extent as previously agreed and as set out in that one certain Development Agreement entered into between the DEVELOPER and CITY pursuant to authority granted in Ordinance 91539, passed and approved March 30, 2000 and which is attached hereto as Exhibit "A".

16.2 It is expressly understood and agreed that DEVELOPER is and shall be deemed to be an independent contractor and operator responsible to all parties for its respective acts or omissions and that CITY shall in no way be responsible therefor.

XVII. NONDISCRIMINATION

17.1 DEVELOPER covenants that it, or its agents, employees or anyone under its control, will not discriminate against any individual or group on account of race, color, sex, religion, national origin, handicap or familial status, in employment practices or in the use of or admission to the premises, which said discrimination DEVELOPER acknowledges is prohibited.

XVIII. CONFLICT OF INTEREST

18.1 DEVELOPER covenants that neither it nor any member of its governing body or of its staff presently has any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this AGREEMENT. DEVELOPER further covenants that in the performance of this AGREEMENT, no persons having such interest shall be employed or appointed as a member of its governing body or of its staff.

18.2 DEVELOPER will not enter into any contracts with related or affiliated parties which would be paid in whole or part with funds received under this AGREEMENT.

18.3 No member of CITY's governing body or of its staff who exercise any function or responsibility in the review or approval of the undertaking or carrying out of this AGREEMENT shall:

(A) Participate in any decision relating to this AGREEMENT which may affect his or her personal interest or the interest of any corporation, partnership, or association in which he or she has a direct or indirect interest;

(B) Have any direct or indirect interest in this AGREEMENT or the proceeds thereof.

XIX. POLITICAL ACTIVITY

19.1 None of the performance rendered hereunder shall involve, and no portion of the funds received hereunder shall be used, either directly or indirectly, for any political activity including, but not limited to, an activity to further the election or defeat of any candidate for public office or for any activity undertaken to influence the passage, defeat or final content of local, state or federal legislation.

XX. SECTARIAN ACTIVITY

20.1 None of the performance rendered hereunder shall involve, and no portion of the funds received hereunder shall be used, directly or indirectly, for the construction, operations, maintenance or administration of any sectarian or religious facility or activity, nor shall said performance rendered or funds received be utilized so as to benefit, directly or indirectly, any such sectarian or religious facility or activities.

XXI. RIGHTS TO PROPOSAL AND CONTRACTUAL MATERIAL

21.1 All finished or unfinished reports, documents, data, studies, surveys, charts, drawings, maps, models, photographs, designs, plans, schedules, or other appended documentation to any proposal or contract, and any responses, inquiries, correspondence and related material submitted by DEVELOPER pursuant to this AGREEMENT, shall, upon receipt, become the property of CITY. These documents shall be promptly delivered to CITY in a reasonably organized form, without restriction on its future use by CITY on any additional work associated with the Project and related facilities. DEVELOPER may retain for its files any copies of documents it chooses to retain and may use work product as it deems fit. Nothing herein shall deny DEVELOPER the right to retain duplicates. All of the documents shall be maintained within the DEVELOPER's principal place of business. In the event an Open Records Request is received, DEVELOPER agrees to and shall provide the CITY with a copy of its records relating to the Project, at no cost to CITY, to the extent required by law. DEVELOPER will be under no obligation to manipulate the data contained in such records and they may be presented in the format held by DEVELOPER.

XXII. DEBARMENT CLAUSE

22.1 DEVELOPER certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this AGREEMENT by any federal, state or local agency.

XXIII. SUB-CONTRACTING

23.1 Any work or services sub-contracted hereunder shall be sub-contracted only by written contract or agreement and, unless specific waiver is granted in writing by CITY, shall be subject by its terms to each and every provision of this AGREEMENT, except it is agreed that the general contractor may carry blanket insurance and bonds for the Project and its subcontractors. Compliance by sub-contractors with this AGREEMENT shall be the responsibility of DEVELOPER.

23.2 DEVELOPER agrees that no contract for work pursuant to this AGREEMENT shall provide for the payment on a "cost plus a percentage of cost" basis.

23.3 CITY shall in no event be obligated to any third party, including and sub-contractor of DEVELOPER, for performance of work or services.

XXIV. CHANGES AND AMENDMENTS

24.1 Except when the terms of this AGREEMENT expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall be by amendment in writing executed by both the City Council of the CITY and DEVELOPER.

XXV. TERMINATION

25.1 "Termination" of this AGREEMENT shall mean termination by expiration of the AGREEMENT term or earlier termination pursuant to any of the provisions hereof.

25.2 Either Party may terminate this AGREEMENT for any of the following reasons:

(A) Neglect or failure by the other Party to perform or observe any of the terms, conditions, covenants or guarantees of this AGREEMENT; and the continuation of such failure for a period of sixty (60) days after notice of such failure; provided, however, that if such performance or observance cannot reasonably be accomplished within such sixty (60) day period, then no Event of Default shall occur unless the other Party fails to commence such performance or observance within such sixty (60) day period and fails to diligently prosecute such performance or observance to conclusion thereafter.

25.3 Upon decision to terminate, written notice of such and the effective date thereof, shall be immediately provided.

25.4 Upon receipt of notice to terminate, all finished or unfinished documents, data, studies, surveys, charts, drawings, maps, models, photographs, designs, plans, schedules, or other appended documentation to any proposal or contract, prepared by or on behalf of DEVELOPER under this AGREEMENT with respect to the Project, shall, at the option of CITY and if the cost therefore has been paid by CITY, become the property of CITY and shall, if requested or agreed to by CITY, be delivered by DEVELOPER to CITY in a timely and expeditious manner.

25.5 Within thirty (30) days after receipt of notice to terminate, DEVELOPER shall submit a statement to CITY, indicating in detail the services performed under this AGREEMENT prior to the effective date of termination. Any termination of this AGREEMENT as herein provided shall not relieve DEVELOPER from the payment of any sum(s) that shall then be due and payable or become due and payable to CITY hereunder or any claim for actual damages then or theretofore accruing against DEVELOPER hereunder or by law or in equity, and any such termination shall not prevent CITY from enforcing the payment of any such sum(s) or claim for actual damages from DEVELOPER. In no event shall CITY be entitled to recover any special or consequential damages as a result of any termination of this AGREEMENT. All rights, options, and remedies of CITY contained in this AGREEMENT shall be constructed and held to be cumulative and no one of them shall be exclusive of the other, and CITY shall have the right to pursue any one or all of such remedies or any such other remedy or relief which may be provided by law or in equity whether or not stated in this AGREEMENT.

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XXVI. NOTIFICATION OF ACTION BROUGHT

26.1 In the event that any claim, demand, suit, proceeding, cause of action or other action relating to this AGREEMENT (hereinafter collectively referred to as "claim") is made or brought against DEVELOPER, DEVELOPER shall give written notice thereof to CITY within five (5) working days after itself being notified. DEVELOPER's notice to CITY shall state the date of notification to DEVELOPER of the claim; the name and addresses of those instituting or threatening to institute the claim; the basis of the claim; and the name(s) of any others against whom the claim is being made or threatened.

XXVII. ASSIGNMENTS

27.1 DEVELOPER shall not transfer, pledge or otherwise assign this AGREEMENT, any interest in and to same, or any claim arising thereunder, except pursuant to the same terms and conditions as an assignment of the Development Agreement.

XXVIII. SEVERABILITY OF PROVISIONS

28.1 If any clause or provision of this AGREEMENT is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this AGREEMENT shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this AGREEMENT that is invalid, illegal, or unenforceable, there be added as part of the AGREEMENT a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XXIX. NON-WAIVER OF PERFORMANCE

29.1 No waiver by a party of a breach of any of the terms, conditions, covenants or guarantees of this AGREEMENT shall be constructed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of a party to insist in any one or more cases upon the strict performance of any of the covenants of this AGREEMENT, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this AGREEMENT shall be deemed to have been made or shall be effective unless expressed in writing and signed by the affected party.

29.2 No act or omission of a party shall in any manner impair or prejudice any right, power, privilege, or remedy available to a party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

29.3 No representative or agent of a party shall waive the effect of the provisions of this Article.

XXX. ENTIRE AGREEMENT

30.1 This AGREEMENT (including the exhibits attached hereto) constitutes the final and entire agreement between the parties hereto and contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this AGREEMENT shall be deemed to

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exist or to bind the parties hereto unless same be in writing, dated subsequent to the date hereof, and duly executed by the parties.

30.2 The Parties acknowledge and agree that in the event a conflict arises between Exhibit "A" and this AGREEMENT, the provisions of this AGREEMENT shall control.

30.3 This AGREEMENT may be executed in multiple counterparts, each of which shall be deemed to be an original, but taken together shall constitute only one document.

XXXI. INTERPRETATION

31.1 In the event any disagreement or dispute should arise between the parties hereto, the resolution of which would have an adverse affect on the UDAG funding or would cause a default on the UDAG, then the CITY, as the party ultimately responsible for all matters of compliance with the UDAG, rules and regulations, shall have the final authority to secure an interpretation from HUD and the parties shall follow the direction of HUD.

31.2 Each party has thoroughly reviewed and revised this AGREEMENT and has had the advice of legal counsel prior to execution hereof, and the parties agree that none of them shall be deemed to be the drafter thereof.

XXXII. NOTICES

32.1 For purposes of this AGREEMENT, all official communications and notices among the parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the address set forth below:

CITY:
Director
Economic Development Department
Post Office Box 839966
San Antonio, Texas 78283-3966

DEVELOPER:
Street Retail San Antonio, LP
c/o Street Retail, Inc.
1626 East Jefferson Street
Rockville, Maryland 20852-4041
Attn: John Tschiderer

with a copy to:
Street Retail San Antonio, LP
c/o Street Retail, Inc.
1626 East Jefferson Street
Rockville, Maryland 20852-4041
Attn: Legal Department

Notice of changes of address by either party must be made in writing delivered to the other party's last known address within five (5) business days of such change.

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XXXIII. PARTIES BOUND

33.1 This AGREEMENT shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, except as otherwise expressly provided for herein.

XXXIV. GENDER

34.1 Words of gender used in this AGREEMENT shall be held and construed to include the other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

XXXV. RELATIONSHIP OF PARTIES

35.1 Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of partners, joint venturers, or any other similar such relationship between the parties hereto. **DEVELOPER** shall not be considered an employee of the **CITY**, but shall occupy the status of Independent Contractor with the CITY. The **DEVELOPER** shall perform its tasks and duties consistent with such status, and will make no claim or demand for any right or privilege applicable to an officer or employee of the **CITY**, including, but not limited to, worker's compensation, disability benefits, accident or health insurance, unemployment insurance, social security or retirement membership.

XXXVI. TEXAS LAW TO APPLY

36.1 **THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**

XXXVII. CAPTIONS

37.1 The captions contained in this AGREEMENT are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this AGREEMENT.

XXXVIII. DISPUTE RESOLUTION

38.1 In the event there is any dispute between or among the Parties that cannot be resolved, the Parties agree to submit the dispute to a mutually agreeable third party who will assist in mediating the dispute to a satisfactory resolution utilizing the then current construction industry mediation rules of the American Arbitration Association or other mutually agreed to and recognized industry source for such standardized mediation rules, prior to recourse to any other formal dispute resolution procedure. The mediation process may be invoked by any Party on written request and shall not be construed to constitute an admission against interest of the Party requesting mediation. Any mediation shall be confidential and non-binding on the Parties, all costs to be equally borne by the Parties, and no statements made or information exchanged during mediation will be admissible in any future legal or arbitrable proceedings without the written consent of the other Party.

[SIGNATURES FOR THIS AGREEMENT ARE ON THE NEXT PAGE]

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EXECUTED in duplicate originals this the 8th day of January, 2002.

CITY OF SAN ANTONIO
a Texas municipal corporation

BY: ______________________
Terry M. Brechtel,
City Manager

ATTEST:

____
City Clerk

STREET RETAIL SAN ANTONIO, LP
a Delaware limited partnership, acting by and through its sole general partner, SRI San Antonio, Inc., a Maryland Corporation

BY: ______________________
NAME: ______________________
TITLE: ______________________

WITNESS:

____

APPROVED:

____
Asst. City Attorney

ATTACHMENTS:

Exhibit "A"	Development Agreement Approved in Ordinance 91539
Exhibit "B"	UDAG, as Amended
Exhibit "C"	Plat of Public Dedication by Developer
Exhibit "D"	[*Not Used in this Agreement*]
Exhibit "E"	Work Statement inclusive of design and scope of Project
Exhibit "F"	Developer's Budget for the Project
Exhibit "G"	Change Orders