

AN ORDINANCE **101823**

**AUTHORIZING EXECUTION OF AN ECONOMIC DEVELOPMENT PROGRAM AGREEMENT WITH PARK CENTRE TOWERS, LTD., WITH TERMS RELATING TO A PREVIOUSLY APPROVED \$300,000 MARKETING ASSISTANCE LOAN FROM THE ECONOMIC DEVELOPMENT INCENTIVE FUND, AS WELL AS A SEVEN-YEAR ANNUAL GRANT WITH AN ESTIMATED PRESENT VALUE OF \$2,706,585, FOR THE DEVELOPMENT OF APPROXIMATELY 252 CONDOMINIUMS AND 44 TOWNHOMES ON THE NEAR EASTSIDE OF DOWNTOWN KNOWN AS THE PARK CENTRE TOWERS PROJECT; AUTHORIZING GRANT PAYMENTS CONTINGENT UPON ANNUAL APPROPRIATION.**

\* \* \* \* \*

**WHEREAS**, a local investment group known as Park Centre Towers, Ltd. (the "Developer"), led by Drake Leddy (Presidian Companies) and Jeff Rochelle, proposes to develop two condominium towers and adjacent town homes on the near Eastside of downtown; and

**WHEREAS**, the Developer currently has an option to purchase adjoining property for the project from VIA Metropolitan Transit and East Commerce Realty; and

**WHEREAS**, the Developer is seeking predevelopment, marketing assistance and long-term tax incentives from the City for the two-phase project which, when complete, will consist of two towers with 252 units, ranging in price from \$200,000 to \$500,000 per unit, and adjacent four-story town homes with 44 units, ranging in price from \$320,000 to \$480,000 per unit (the "Project"); and

**WHEREAS**, the total Project cost is estimated at approximately \$84 million for both phases (\$45 million for Phase I and \$39 million for Phase II), of which approximately \$71.6 million will be financed through a bank loan and with approximately \$12.4 million supplied from owner equity; and

**WHEREAS**, a municipality may grant and loan municipal funds under Chapter 380 of the Texas Local Government Code to promote economic development once it has established a program for these purposes; and

**WHEREAS**, City Council originally established such a program known as the Economic Development Program (the "Program") on February 27, 2003, which has since been modified on June 3, 2004 and, most currently, on April 14, 2005 by Ordinance Nos. 100671 and 100684 and provides authority to the City to award loans and grants that either meet the Economic Development Incentive Fund (the "EDIF") Guidelines, or for other specified projects authorized by City Council; and

**WHEREAS**, to assist in marketing expenses for the Project, located in an area that has not traditionally been targeted for new residential housing, a loan of \$300,000 was previously approved and appropriated from the EDIF by City Council on May 26, 2005 through Ordinance No.100964, contingent on the Developer obtaining title to the Project site and subject to terms in the proposed Program Agreement, a copy of which is set out in Attachment I; and

**WHEREAS**, the Developer has also requested annual grant payments from the City for a seven-year term, with payments beginning on February 15, 2009 through February 15, 2015, subject to annual

appropriation, based on the lesser of either the annual taxes collected on the property, or an annual grant cap, with the City retaining any taxes that exceed the annual grant cap in each year of the grant term; and

**WHEREAS**, the annual grant cap is based on estimated annual property taxes, which are calculated by applying the City's property tax rate to the Developer's projected sales value for the condominiums and town homes; and

**WHEREAS**, as a condition of receiving the seventh-year of the grant, the Developer will provide local Small, Minority, or Women-Owned Business Enterprises (SMWBE) at least thirty-one percent (31%) of the total \$64 million in construction contracts; and

**WHEREAS**, the Developer has also agreed to enter into a mentor-protégé agreement with an African-American owned construction firm for at least twenty percent (20%) of the total construction project costs (excluding architect and engineering costs) estimated at approximately \$61,500,000, which can be counted toward achievement of the 31% local SMWBE requirement; and

**WHEREAS**, the Developer is also seeking to establish a "Quiet Zone" in order to reduce the noise from train traffic along a two-mile corridor partially adjacent to the Project site, extending from Essex on the South to Sherman on the North as illustrated in the map listed as Attachment II; and

**WHEREAS**, the Quiet Zone potentially involves the closure of several streets and the conversion of other streets to one-way access with cost estimates for constructing the Quiet Zone ranging from \$400,000 to \$2,000,000; and

**WHEREAS**, the Project site is currently within the boundaries of the Inner City Tax Increment Investment Zone (the "TIRZ"), and in order to allow for the grant payments referenced above, the Developer has requested the removal of the Project site from the TIRZ; and

**WHEREAS**, on December 5, 2005, the TIRZ Board recommended removal of the Project site from the TIRZ boundaries with up to \$800,000 in funding for the Quiet Zone based on a maximum cost of \$2,000,000; and

**WHEREAS**, final costs will be determined next summer following negotiations with Union Pacific Railroad and it is anticipated that the City will subsequently advertise for and select a contractor to complete the Quiet Zone by December 2006; and

**WHEREAS**, Bexar County is also considering an economic development grant for the Project under Chapter 381 of the Local Government Code, with terms and conditions under negotiation; and

**WHEREAS**, the Project supports the City's goal for Eastside redevelopment and downtown housing as set out in the Downtown Master Plan, the Incentive Scorecard Policy, and the recent Urban Land Institute report, accepted by City Council on April 21, 2005, which specifically recommend this type of residential development in this area of the City; and

**WHEREAS**, the City Council finds that it is in the best interests of the City to support the Project as provided for in the Economic Development Program Agreement; **NOW THEREFORE:**

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


**SECTION 1.** The City Council approves the terms and conditions and authorizes the execution of an Economic Development Program Agreement with Park Centre Towers, Ltd. with provisions relating to a previously approved \$300,000 marketing assistance loan from the Economic Development Incentive Fund, as well as a seven-year annual grant with an estimated present value of \$2,706,585, for the development of approximately 252 condominiums and 44 town homes on the near Eastside of downtown known as the Park Centre Towers Project. A copy of the Agreement, in substantially final form, is set out as Attachment I. The City Manager or her designee is authorized to execute this agreement and any and all necessary documents deemed necessary by the City Attorney's Office to fulfill the purpose and intent of this ordinance and the Agreement. Final copies of all Project agreements will be attached to this ordinance upon execution by the parties.

**SECTION 2.** Funds are authorized to be appropriated and payment is authorized to Park Centre Towers, Ltd., in an amount not to exceed \$263,120 on February 15, 2009 based on tax year 2008 collections and up to \$565,458 a year for the following six years (2009-2014) for a total potential grant payment of \$2,706,585 at present value. Funds are to be paid from the General Fund and payment to Park Centre Towers, Ltd., is contingent upon annual appropriations approved by City Council.


**SECTION 3.** Payment to Park Centre will be based on the lesser amount of annual taxes collected or an annual grant cap based on estimated annual property taxes calculated by applying the City's property tax rate in effect for each tax year to Park Centre's projected sales value for the condominiums and town homes. In any given tax year, the City will retain any annual taxes that exceed the calculated annual cap.

**SECTION 4.** This ordinance shall be effective upon eight affirmative votes.

**PASSED AND APPROVED** this 15<sup>th</sup> day of December, 2005.

  
**M A Y O R**  
PHIL HARDBERGER

ATTEST:   
City Clerk

APPROVED AS TO FORM:   
for City Attorney

# Agenda Voting Results

**Name:** 11.

**Date:** 12/15/05

**Time:** 02:47:15 PM

**Vote Type:** Multiple selection

**Description:** An Ordinance authorizing execution of an Economic Development Program Agreement with Park Centre Towers, Ltd., with terms relating to a previously approved \$300,000.00 marketing assistance loan from the Economic Development Incentive Fund, as well as a seven-year annual grant with an estimated present value of \$2,706,585.00, for the development of 252 condominiums and 60 townhomes on the near Eastside of downtown known as the Park Centre Towers Project; authorizing grant payment contingent upon annual appropriation. [Presented by Ramiro Cavazos, Director, Economic Development; Jelynn LeBlanc Burley, Assistant City Manager]

Voter	Group	Status	Yes	No	Abstain
ROGER O. FLORES	DISTRICT 1		x		
SHEILA D. MCNEIL	DISTRICT 2		x		
ROLAND GUTIERREZ	DISTRICT 3		x		
RICHARD PEREZ	DISTRICT 4		x		
PATTI RADLE	DISTRICT 5		x		
DELICIA HERRERA	DISTRICT 6		x		
ELENA K. GUAJARDO	DISTRICT 7		x		
ART A. HALL	DISTRICT 8		x		
KEVIN A. WOLFF	DISTRICT 9		x		
CHIP HAASS	DISTRICT_10		x		
MAYOR PHIL HARDBERGER	MAYOR		x		

# ATTACHMENT I

**ECONOMIC DEVELOPMENT  
PROGRAM AGREEMENT**

**Dated as of December \_\_\_, 2005**

**among**

**THE CITY OF SAN ANTONIO, TEXAS,  
as the City**

**and**

**PARK CENTRE TOWERS, LTD.  
as the Developer**

## TABLE OF CONTENTS

SECTION 1. INCORPORATION OF RECITALS.....	3
SECTION 2. DEFINITIONS .....	3
SECTION 3. PURPOSE .....	7
3.1 Objective .....	7
3.2 Concept and Structure .....	7
SECTION 4. TERM .....	8
SECTION 5. PARK CENTRE OBLIGATIONS AND GOALS .....	8
5.1 Acquisition of VIA Parcel .....	8
5.2 Required Improvements .....	8
5.3 Quiet Zone .....	9
5.4 Construction Spending Requirement .....	9
5.4.1. San Antonio SM/WBE Companies .....	9
5.4.2 Mentor-Protégé Program .....	9
5.5 Use of Park Centre for Residential Use Purposes .....	11
5.6 Reports .....	11
5.7 Audits .....	12
SECTION 6. PROGRAM GRANTS .....	12
6.1 Grant Payments .....	12
6.2 Excess Park Centre Site Property Taxes Excluded from Program Grants .....	13
6.3 Reduction of Grant Payment for Year Seven (Tax Year 2014) .....	13
6.4 Deadline for Payment .....	13
6.5 Current Revenue .....	13
6.6 Program Grant Termination .....	14
SECTION 7. PROGRAM LOAN, REPAYMENT AND OTHER OBLIGATIONS .....	14
7.1 Program Loan .....	14
7.2 Repayment of Program Loan .....	15
7.3 Estoppel Certificate .....	15
SECTION 8. FAILURE TO MEET VARIOUS OBLIGATIONS AND CITY'S REMEDIES .....	16
8.1 Failure to Acquire VIA Parcel .....	16
8.2 Failure to Construct Required Improvements .....	16
8.3 Failure by Park Centre to Meet Construction Spending Requirements .....	17
8.4 Failure to Use the Park Centre Site for Residential Use Purposes .....	17
8.4.1 For an Entire Year .....	17
8.4.2 For a Portion of a Year .....	18
SECTION 9 ATTORNEY'S FEES AND EXPRESS .....	18
SECTION 10. MUTUAL ASSISTANCE .....	19
SECTION 11. REPRESENTATION AND WARRANTIES .....	19
SECTION 12. SECTION OR OTHER HEADINGS .....	19
SECTION 13. AMENDMENT .....	20
SECTION 14. SUCCESSORS AND ASSIGNS .....	20
SECTION 15. NOTICE .....	21
SECTION 16 INTERPRETATION .....	21
SECTION 17. APPLICABLE LAW .....	21
SECTION 18. COUNTERPARTS .....	22
SECTION 19. ENTIRE AGREEMENT .....	22

# ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

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This ECONOMIC DEVELOPMENT PROGRAM AGREEMENT (“Agreement”) is made and entered into by and between the CITY OF SAN ANTONIO (“City”), a home rule municipal corporation organized under the laws of the State of Texas, and PARK CENTRE TOWERS, LTD (“PARK CENTRE”), a Texas limited partnership acting by and through its general partner CENTRE TOWERS, LLC., (collectively referred to as the “Parties”).\_\_\_\_\_.

## RECITALS

**WHEREAS**, local investors propose to develop two condominium towers with approximately 252 units expected to range in price from \$200,000 to \$500,000 per unit and adjacent four-story town homes with approximately 44 units expected to range in price from \$320,000 to \$480,000 per unit on the near Eastside of downtown San Antonio (the “Project”) and have requested predevelopment, marketing assistance and long-term tax incentives from the City to help finance the Project; and

**WHEREAS**, the total Project cost is estimated to be \$84 million for both phases (\$45 million for Phase I and \$39 million for Phase II), \$71.6 million of which will be financed through a bank loan and approximately \$12.4 million from owner equity; and

**WHEREAS**, under authority of Section 52-a of Article III of the Texas Constitution, the Texas Legislature enacted Chapter 380, Texas Local Government Code which provides that the governing body of a municipality may establish and provide for the administration of one or more programs, including programs for making loans and grants of public money and providing personnel and services of the municipality, to



promote state or local economic development and to stimulate business and commercial activity in the municipality; and

**WHEREAS**, the City, pursuant to Ordinance No. 97248 dated February 27, 2003, first established a Chapter 380 program known as the Economic Development Program (the "Program") and most recently modified the Program on April 14, 2005 by Ordinance Nos. 100671 and 100684, which provide authorization for the City to award loans and grants that either meet the Economic Development Incentive Fund (the "EDIF") Guidelines, or for other specified projects authorized by City Council; and

**WHEREAS**, the City Council has found and determined that by entering into this Agreement, the potential economic benefits that will accrue to the City under the terms and conditions of this Agreement are consistent with the City's economic development objectives and that the increased housing development in the downtown area of the City will further the goals espoused by the City as set forth in the Downtown Master Plan, the Incentive Scorecard Policy, and the recent Urban Land Institute report, accepted by City Council on April 21, 2005, which specifically recommends this type of residential development in this area of the City;

**NOW, THEREFORE**, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

## **AGREEMENT**

### **SECTION 1.**

#### **INCORPORATION OF RECITALS**

The City Council hereby finds that the recitals set forth above are true and correct and form the basis upon which the City has entered into this Agreement.

### **SECTION 2.**

#### **DEFINITIONS**

**African American Business Enterprise ("AABE")** means a sole proprietorship, partnership or corporation owned, operated and controlled by an African American Group member who has at least fifty one percent (51%) ownership. The African American group member(s) must have operational and managerial control, interest in capital, expertise and earnings commensurate with the percentage of ownership and be legal residents or citizens of the United States or its territories. To qualify as an AABE, the enterprise shall be headquartered in Bexar County or the San Antonio Metropolitan Statistical Area for any length of time or shall be doing business in a locality or localities from which the City regularly solicits, or receives bids on or proposals for, City contracts within the AABE's category of contracting for at least one year.

**Base Year Value** means the taxable value of the PARK CENTER Site as determined by the Bexar Appraisal District as of January 1, 2006.

**Capped Grant Payment** means the maximum Program Grant for a given tax year based on PARK CENTRE'S estimated taxable value, as set forth in **Section 6.1** on which the City will calculate its Program Grant to PARK CENTRE for an eligible tax year.

**Construction Costs** means site development costs (exclusive of site acquisition costs), actual construction costs, including contractor fees, and the costs of supplies and materials in constructing the Required Improvements.

**Excess PARK CENTRE Site Property Taxes** means the positive difference, if any, between property tax revenue received by the City in a given tax year which is based on the entire taxable assessed value of the PARK CENTRE Site and the Capped Grant Payment for the same tax year as identified in Section 6.1. For example, and as an example only, if the Capped Grant Payment in a given tax year is \$565,458 and the property taxes based upon the entire taxable assessed value of the PARK CENTRE Site for that tax year less the Base Year Value is actually \$750,000, Excess PARK CENTRE Site Property Taxes would be the tax revenue received by the City for that tax year based on the \$184,542 difference between \$750,000 and \$565,458.

**Force Majeure** shall mean an event beyond Owner's reasonable control, including, without limitation, acts of God, fires, strikes, national disasters, wars, terroristic acts, riots, material or labor restrictions, delays caused by unforeseen structural issues, weather delays, unreasonable delays by the City in issuing any permits or certificates of occupancy or conducting any inspections of or with respect to the Required Improvements, or delays caused by unforeseen construction or site issues, but shall not include construction delays caused due to purely financial matters involving Owner, such as, without limitation, delays in the obtaining of adequate financing.

**Mentor** means a large business concern that demonstrates a commitment and capability to assist in the development of an African-American Business Enterprise protégé.

**PARK CENTRE** means Park Centre Towers, Ltd. and its permitted successors and assigns.

**PARK CENTRE Grant Payments** means the amount of Grant Payments paid in a given tax year by the City based on the lesser of (a) the City property taxes collected in a given tax year from all of the PARK CENTRE site property owners less the taxes that would have been collected on the Base Year Value or (b) the Capped Grant Payment in Section 6.1. The entire taxable assessed value of the PARK CENTRE Site will be established solely by the Bexar Appraisal District, with the understanding that PARK CENTRE or other owner(s) of property comprising or within the PARK CENTRE Site shall retain all rights to protest and contest any such appraisals.

**PARK CENTRE Site** means the real property described in Exhibit "A" and all real property improvements thereon, including but not limited to, two towers with approximately 252 condominiums units, adjacent 4-story town homes with approximately 44 units, and an adjacent parking garages. The PARK CENTRE Site specifically excludes the property commonly known as the Ellis Alley Conclave.

**Program** means the economic development program authorized by Chapter 380 of the Texas Local Government Code and established and outlined in this Agreement.

**Program Loan** means the one-time economic development loan paid by the City to PARK CENTRE in accordance with this Agreement and as part of the Program.

**Program Grant** means the annual economic development grant paid by the City to PARK CENTRE in accordance with this Agreement and as part of the Program.

**Project** means the construction by PARK CENTRE of two condominium towers constructed in two (2) phases with approximately 252 units expected to range in

price from \$200,000 to \$500,000 per unit and adjacent four-story town homes with approximately 44 units expected to range in price from \$200,000 to \$500,000 per unit.

**Protege** means an AABE concern that is independently owned and operated, not dominant in its field and meets the definition of an AABE as defined by the City of San Antonio Ordinance #100182.

**Quiet Zone** means a project encompassing up to two miles of Union Pacific Rail Road (UPRR) rail line from Essex Street on the south to Sherman Street on the north, the purpose of which is to relieve noise along this major economic development commercial node, prevent trains from sounding off their horns along this corridor, and improve the safety along these crossings within the corridor.

**Residential Use Purposes** means the marketing for the sale, and the development and construction for the use of the PARK CENTRE Site at all times as residential condominiums and residential townhomes available for sale and/or occupied by owners or lessors of the condominiums and townhomes.

**San Antonio SM/WBE Company** means a small, minority or woman-owned business enterprise that has received certification as either a small business enterprise (SBE), minority business enterprise (MBE), woman-owned business enterprise (WBE) or an African-American-owned business enterprise (AABE) by either the City or the South Texas Regional Certification Agency (STRCA) and whose principal business office is located within the corporate limits of the City.

**SBEDA means Small Business Economic Development Advocacy.**

**Substantial Completion** means the issuance by the City of a final certificate of occupancy for (a) the Required Improvements, which constitute Phase I of the residential condominium tower; and (b) the first occupied unit.

**VIA Parcel** means the real property described in Exhibit “\_\_”

### **SECTION 3.**

#### **PURPOSE**

##### **3.1. Objectives.**

PARK CENTRE is under contract with VIA Metropolitan Transit to purchase the VIA Parcel and presently has the right to acquire adjoining property owned by East Commerce Realty (collectively “the PARK CENTRE Site”) on the near Eastside of downtown San Antonio, as more specifically depicted in Exhibit “\_\_”, attached hereto and hereby made a part of this Agreement for all purposes. Due to various factors, the City Council does not believe that the development of the PARK CENTRE Site at this point is likely to occur without public assistance. Therefore, the City and PARK CENTRE have negotiated the Program outlined in this Agreement in order to facilitate development of the PARK CENTRE Site that would probably not occur without the Program.

##### **3.2. Concept and Structure.**

Under the Program, the City will provide PARK CENTRE with certain annual economic development grants based on the amount of real property tax revenue received by the City from the PARK CENTRE Site, as defined in Section 6 of this Agreement, and upon compliance by PARK CENTRE with various

commitments that will benefit the City, as further provided in this Agreement. The economic development grants provided under this Agreement are in addition to a \$300,000 loan from the City to PARK CENTRE for marketing assistance, as further defined in Section 7 of this Agreement.

#### **SECTION 4.**

##### **TERM**

This Agreement shall be effective as of the date of execution by both parties and shall expire upon the latter of the date on which the City makes its seventh (7th) annual Program Grant payment to PARK CENTRE, as provided by Section 6 hereof, or the date on which the last payment of the \$300,000 loan is made by PARK CENTRE to the City, unless terminated earlier as provided by and in accordance with this Agreement (the "Term").

#### **SECTION 5.**

##### **PARK CENTRE OBLIGATIONS AND GOALS**

##### **5.1 Acquisition of VIA Parcel.**

PARK CENTRE shall acquire title to the VIA Parcel by October 1, 2006, (unless extended pursuant to the terms of the Purchase Agreement between those parties), and provide proof of title acquisition to the City.

##### **5.2. Required Improvements.**

PARK CENTRE will make or cause to be made Substantial Completion of real property investments on the PARK CENTRE Site by September 30, 2008, as may be extended by Force Majeure, in order for the PARK CENTRE Site to be used for Residential Use Purposes, with the PARK CENTRE Site containing (i)

approximately 139 residential units, and (ii) adjacent parking garages. (collectively, the “**Required Improvements**”).

**5.3. Quiet Zone.**

In conjunction with the Project, the Parties will use all reasonable efforts to negotiate an agreement for construction of the Quiet Zone pursuant to which PARK CENTRE will contribute funds to provide for construction of the Quiet Zone, which is to be thereafter constructed by the City. Preliminary cost estimates for constructing the Quiet Zone range from \$400,000 to \$2,000,000. It is further anticipated that City will seek distribution of funds from Tax Increment Reinvestment Zone No. 11 to reimburse PARK CENTRE for 40% of the costs of constructing the Quiet Zone. Neither PARK CENTRE'S obligation to enter into this Quiet Zone agreement nor compliance with its terms shall be considered an obligation under this Agreement or a condition to receipt of Program Grants.

**5.4. Construction Spending Requirement.**

**5.4.1. San Antonio SM/WBE Companies.**

Without regard to the actual amount of dollars spent on the Required Improvements, PARK CENTRE will spend at least thirty one percent (31%) of its Construction Costs for the Required Improvements with contractors that are San Antonio SM/WBE Companies.

**5.4.2. Mentor-Protégé Program.**

PARK CENTRE will implement a mentor-protégé program designed to provide beneficial developmental assistance to one or



more African American owned business enterprises (AABEs) by the PARK CENTRE prime contractor and spend at least twenty percent (20%) of its Construction Costs, excluding architect and engineering costs, for the Required Improvements on contracts with AABEs. Such expenditures under this Section may be also counted toward the overall 31% local SM/WBE requirement in Section 5.3.1. The intent of the program is to foster the development of an AABE through the establishment of a business relationship between such prime contractor and a certified AABE.

- a. A protégé firm may not be considered an affiliate of a mentor firm solely on the basis that the protégé firm is receiving developmental assistance from the mentor firm.
- b. The developer's prime contractor will enter into a contract with an eligible protégé with terms including, but not limited to:
  - i. Name and address of mentor and protégé firm and a point of contact within both firms who will oversee the contract;
  - ii. A description of the type of developmental program this will be provided by the mentor firm to the protégé firm, to include description of the subcontract work;
  - iii. A listing of the anticipated number and types of subcontracts to be awarded to the protégé firm;

- iv. Contract termination procedures; and
- v. Signatures and date of execution
- c. Mentor-Protégé activity will be available to any type of contract deemed appropriate by the City of San Antonio when the requirement of subcontracting is anticipated.
- d. The Mentor may receive credit toward attaining the SM/WBE utilization requirements contained in this Agreement for Protégé participation in project subcontracts.
- e. The Mentor may receive credit toward attaining the SBEDA utilization requirements contained in this Agreement by counting the cost of protégé development assistance.

**5.5. Use of PARK CENTRE Site for Residential Use Purposes.**

PARK CENTRE shall use the PARK CENTRE Site or cause the PARK CENTRE Site to be used or available for use for Residential Use Purposes at all times during the Term of this Agreement plus three (3) years thereafter.

**5.6 Reports.**

On a quarterly basis beginning March 31, 2006 and until construction of the Required Improvements is substantially completed, PARK CENTRE will provide the City with a SM/WBE Utilization Report (“Report”) in order for the City to assess the degree to which PARK CENTRE has met its obligations set forth in Section 5.4 during the previous quarter. Such Report shall be made utilizing the format set out in **Exhibit \_\_\_\_\_**.

Following **Substantial** Completion of the Required Improvements, but no later than December 31, 2008, PARK CENTRE will also provide certification to the City verifying the amount of capital investment and improvements.

In addition, PARK CENTRE will provide the City with a semi-annual report on the status of the pre-sale of PARK CENTRE units to include the percentage of sales achieved beginning March 31, 2006, and until such time as eighty percent (80%) sales are reached.

**5.7 Audits.**

PARK CENTRE agrees that the City will have the right to audit the financial and business records of PARK CENTRE that relate to the PARK CENTRE Site and the Required Improvements (collectively "**Records**") at any time during the Term of this Agreement in order to determine compliance with this Agreement. PARK CENTRE shall make all Records available to the City on the PARK CENTRE Site or at another location in the City acceptable to both parties following reasonable advance notice by the City and shall otherwise cooperate fully with the City during any audit.

**SECTION 6.**

**PROGRAM GRANTS**

**6.1 Grant Payments.**

Subject to PARK CENTRE's continued satisfaction of all the terms and conditions of this Agreement and the submission of required reports per Section 5.6, the City will pay to PARK CENTRE seven (7) annual Program Grants in an amount equal to the lesser of (a) the City property taxes collected in a given tax

year from all of the PARK CENTRE site property owners less the amount of taxes that would have been collected based upon the Base Year Value, or (b) the Capped Grant Payment for the respective eligible Tax Year as reflected in the following:

<u>Tax Year</u>	<u>Capped Grant Payment</u>
2008	\$263,120
2009 through 2014	\$565,458

In the event that PARK CENTRE does not commence construction, as evidenced by issuance of a building permit, of a second condominium tower with approximately 139 units and a second adjacent parking garage as a second phase of the Project by December 31, 2009, then the Capped Grant Payment for purposes of calculating the Program Grant for the remaining term of this Agreement shall be as follows:

<u>Tax Year</u>	<u>Capped Grant Payment</u>
2009 - 2014	\$263,120

**6.2. Excess PARK CENTRE Site Property Taxes Excluded from Program Grants.**

PARK CENTRE understands and agrees that any Excess PARK CENTRE Site Property Taxes received by the City shall remain the property of the City; that the City will not at any time be required to pay PARK CENTRE any amounts equal to Excess PARK CENTRE Site Property Taxes as part of the Program; and that amounts equal to Excess PARK CENTRE Site Property Taxes received in one year will not in any manner be applied to or carried over to any Program Grant to PARK CENTRE in a subsequent year.

**6.3 Reduction of Grant Payment for Year Seven (Tax Year 2014)**

If PARK CENTRE fails to meet its obligations under Section 5.4 of this Agreement as the City's sole and exclusive remedy, PARK CENTRE shall forfeit its right to a Program Grant payment for Year Seven (Tax Year 2014).

**6.4. Deadline for Payment.**

The City's initial PARK CENTRE Grant Payment will be made to the developer on or before February 15, 2009 for Tax Year 2008. All subsequent annual PARK CENTRE Grant Payments will be made on or before February 15 of each year subsequent to the previous Tax Year (For example: for Tax Year 2009, payment is due February 15, 2010). The final payment will be due and paid on or before February 15, 2015.

**6.5 Current Revenue**

The Grants made hereunder shall be paid solely from lawfully available funds that have been appropriated by the City. Under no circumstances shall the City's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Consequently, notwithstanding any other provision of this Agreement, the City shall have no obligation or liability to pay any Grants unless the City appropriates funds to make such payment during the budget year in which such Grant(s) is payable. Further, the City shall not be obligated to pay any commercial bank, lender or similar institution for any loan or credit agreement made by the PARK CENTRE. None of the City's obligations under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution.

**6.6 Program Grant Termination.**

At the option of City, City may terminate the Program Grant for PARK CENTRE'S failure to satisfy the terms and conditions of this Agreement, including the failure to timely repay the Program Loan, if such failure is not cured by PARK CENTRE within thirty (30) days after written notice thereof. To the extent this section conflicts with specific remedies set forth in Section 8 hereof, this section does not apply.

**SECTION 7.**

**PROGRAM LOAN, REPAYMENT AND OTHER OBLIGATIONS**

**7.1 Program Loan.**

Contingent upon: (A) PARK CENTRE securing title to the PARK CENTRE Site from VIA METROPOLITAN TRANSIT; and (B) execution of this Agreement, the City will pay to PARK CENTRE a one-time Program Loan in the amount of three hundred thousand dollars (\$300,000.00) to support marketing and other pre-development efforts to promote the development of the PARK CENTRE Site. This loan will be secured solely by a second lien on all property within the PARK CENTRE Site and will be paid by the City to PARK CENTRE within thirty (30) days of execution of this Agreement.

**7.2 Repayment of Program Loan.**

Following disbursement of the Program Loan, PARK CENTRE shall be obligated to pay CITY pursuant to the terms and conditions of a note to be negotiated between the Parties.

**7.3 Estoppel Certificate.**

PARK CENTRE may request, and provided such statements are true and correct, City will execute an estoppel certificate so long as the certificate is requested in connection with a bona fide business purpose. The certificate, which will be addressed to PARK CENTRE if requested, shall include, but not be limited to, statements that this Agreement is in full force and effect without default (or if a default exists, the nature of the default and curative action taken and/or necessary to effect a cure), the remaining term of this Agreement, and such other matters reasonably requested by the party or parties to receive the certificate.

**SECTION 8.**

**FAILURE TO MEET VARIOUS OBLIGATIONS AND CITY'S  
REMEDIES**

**8.1 Failure to Acquire VIA Parcel**

The City may terminate this Agreement upon written notice to PARK CENTRE if PARK CENTRE does not acquire the VIA Parcel pursuant to Section 5.1.

**8.2 Failure to Construct Required Improvements.**

The City may terminate this Agreement upon written notice to PARK CENTRE if the Required Improvements have not been substantially completed by September 30, 2008 unless delayed because of Force Majeure, in which case the September 30, 2008 deadline shall be extended by the number of days comprising the specific Force Majeure.

**8.3 Failure by PARK CENTRE to Meet Construction Spending Requirements.**

PARK CENTRE's failure to meet its obligations under Section 5.4 of this Agreement shall not place PARK CENTRE in default hereunder or provide the City with the right to terminate this Agreement, but, rather, shall only result in the forfeiture by PARK CENTRE of its right to a Program Grant Payment in Year 2014.

**8.4 Failure to Use the Park Centre Site for Residential Use Purposes.**

Beginning January 1, 2006 and throughout the Term of this Agreement, if the PARK CENTRE Site is at any time not available for use as Residential Use Purposes as required by Section 5.5, PARK CENTRE shall not be deemed to be in default hereunder and the City will not have the right to terminate this Agreement, but, rather, the following provisions shall apply:

**8.4.1 For an Entire Year.**

If the PARK CENTRE Site is not used or available for use for Residential Use Purposes for an entire calendar year, the City will have no obligation to make any Program Grant payment to PARK CENTRE or any successor in interest for the following year, with the understanding that the Term of this Agreement shall not be extended and that any such waiver shall be counted as a Program Grant payment for purposes of calculating the Term of this Agreement. In such an event, the revenue comprising the Program Grant that the City would otherwise have been obligated to make for such following year shall instead be treated as Excess PARK CENTRE Site Property Taxes, as provided in Section 6.3, and will



be retained by the City and shall not be carried over to any Program Grant in any subsequent year.

**8.4.2. For a Portion of a Year.**

If the PARK CENTRE Site is used or available for use for Residential Use Purposes for only a portion of a year, the City's Program Grant payment to PARK CENTRE or any successor in interest for the following year shall be prorated in accordance with the number of days during the previous year that the PARK CENTRE Site was not used for Residential Use Purposes. In such an event, the revenue comprising difference between the Program Grant actually made in such following year and the Program Grant that the City would otherwise have been obligated to make for such following year shall be treated as Excess PARK CENTRE Site Property Taxes, as provided in Section 6.3, and will be retained by the City and shall not be carried over to any Program Grant in any subsequent year.

**SECTION 9**

**ATTORNEY'S FEES AND EXPENSES**

In the event the Park Centre should default under any of the provisions of this Agreement and the City should employ attorneys or incur other expenses for the collection of the payments due under this Agreement or the enforcement of performance or observance of any obligation or agreement on the part of PARK CENTRE herein contained, PARK CENTRE agrees to pay to the City reasonable fees of such attorneys and such other expenses so incurred by the City.

No remedy herein conferred upon or reserved to the City is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute.

**SECTION 10.**

**MUTUAL ASSISTANCE.**

The City and PARK CENTRE will do all things reasonably necessary or appropriate to carry out the objectives, terms and provisions of this Agreement and to aid and assist each other in carrying out such objectives, terms and provisions.

**SECTION 11.**

**REPRESENTATIONS AND WARRANTIES.**

The City represents to PARK CENTRE that the Program and this Agreement are within the scope of its authority and the provisions of the charter and code of the City and that it is duly authorized and empowered to establish the Program and enter into this Agreement. PARK CENTRE represents and warrants to the City that it has the requisite authority to enter into this Agreement.

**SECTION 12.**

**SECTION OR OTHER HEADINGS.**

Section or other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

**SECTION 13.**

**AMENDMENT.**

This Agreement may only be amended, altered, or revoked by written instrument approved by City Council and executed by the Parties.

**SECTION 13.**

**SUCCESSORS AND ASSIGNS.**

This Agreement shall be binding on and inure to the benefit of the parties, their respective successors and assigns. PARK CENTRE may not assign all or part of its rights and obligations hereunder without the approval or consent of the City.

**SECTION 14.**

**NOTICE.**

Any notice and/or statement required and permitted to be delivered shall be deemed delivered by depositing same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses, or at such other addresses provided by the parties in writing:

PARK CENTRE:                   Attn: Drake Leddy  
  PARK CENTRE TOWERS, LTD.  
  2800 NE Loop 410, Suite 105  
  San Antonio, TX 78218

With copies to:                   Attn: Jeffrey A. Rochelle.  
  Law Offices of Jeffrey A. Rochelle  
  7373 Broadway, Suite 402  
  San Antonio, TX 78209

CITY:                                Attn: Director  
  Economic & Community Development Department  
  City of San Antonio  
  100 South Flores  
  San Antonio, Texas 78205

With a copy to:

Attn: City Attorney  
City Attorney's Office  
100 South Flores  
San Antonio, Texas 78205

**SECTION 15.**

**INTERPRETATION.**

Regardless of the actual drafter of this Agreement, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against any party.

**SECTION 16.**

**APPLICABLE LAW.**

This Agreement is made, and shall be construed and interpreted under the laws of the State of Texas, and is performable in Bexar County, Texas.

**SECTION 17.**

**SEVERABILITY.**

In the event any provision of this Agreement is illegal, invalid, or unenforceable under present or future laws, then, and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision that is found to be illegal, invalid, or unenforceable a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

**SECTION 18.**

**COUNTERPARTS.**

This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

**SECTION 19.**

**ENTIRE AGREEMENT**

This Agreement contains the entire agreement between the parties with respect to the transaction contemplated herein.

**EXECUTED** as of the last date indicated below:

**CITY OF SAN ANTONIO:**

**PARK CENTRE TOWER, LTD.**

By: \_\_\_\_\_  
Sheryl Sculley  
City Manager

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTEST:** \_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM:** \_\_\_\_\_  
Michael D. Bernard  
City Attorney

**EXHIBITS**

**“A”**

# EXHIBIT A

**PARK CENTRE**  
**Tower Condominiums, Townhomes and Flats**

**Site Assembly Required**

**TRACT 1**                      Sunset Station Group, L.L.C. – Current Owner

Lot 14, Block 11, NCB 580  
.4708 Acres

**TRACT 2**                      Via Metropolitan Transit – Current Owner

Lot 30, NCB 579  
.3.274 Acres  
Save and except Ellis Alley Compound (Approximately 37,000 sq.  
ft.)



**EXHIBIT B**

## ATTACHMENT II

