

Controller's Office

To the Honorable Mayor and City Council of the City of Houston:

I hereby certify, with respect to the money required for the contract, agreement, obligation, or expenditure contemplated by the ordinance set out below that:

- ( ) Funds have been encumbered out of funds previously appropriated for such purpose.
- ( ) Funds have been certified and designated to be appropriated by separate ordinance to be approved prior to the approval of the ordinance set out below.
- ( ) Funds will be available out of current or general revenue prior to the maturity of any such obligation.
- ( ) No pecuniary obligation is to be incurred as a result of approving the ordinance set out below.
- ( ) The money required for the expenditure or expenditures specified below is in the treasury, in the fund or funds specified below, and is not appropriated for any other purposes.
- ( ) A certificate with respect to the money required for the expenditure or expenditures specified below is attached hereto and incorporated herein by this reference.
- ( X ) Other – Contingent upon receipt of tax increment.

*Donald C. Shaw*  
Donald C. Shaw  
City Controller

Date: 11-25, 2014, City Controller of the City of Houston

FUND REF: N/A AMOUNT: - 0 ENCUMB. NO.: NK20140-15

*MS*  
*MB*  
*AS*

City of Houston, Texas, Ordinance No. 2014-1043

**AN ORDINANCE APPROVING AND AUTHORIZING A PUBLIC IMPROVEMENTS DEVELOPMENT AGREEMENT AMONG THE CITY OF HOUSTON, TEXAS, REINVESTMENT ZONE NUMBER TWENTY THREE, CITY OF HOUSTON, TEXAS, AND EAST END ON THE BAYOU, L.P. RELATED TO THE CONSTRUCTION OF CERTAIN PUBLIC IMPROVEMENTS; AND DECLARING AN EMERGENCY**

\* \* \* \* \*

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON:**

Section 1. The City Council hereby approves and authorizes the contract, agreement, or other undertaking described in the title of this Ordinance, in substantially the form as shown in the document which is attached hereto and incorporated herein by this reference. The Mayor is hereby authorized to execute such document and all related documents on behalf of the City of Houston. The City Secretary is hereby

authorized to attest to all such signatures and to affix the seal of the City to all such documents.

Section 2. The Mayor is hereby authorized to take all actions necessary to effectuate the City's intent and objectives in approving such contract, agreement, or other undertaking described in the title of this Ordinance, in the event of changed circumstances.

Section 3. The City Attorney is hereby authorized to take all action necessary to enforce all legal obligations under such contract, agreement, or other undertaking described in the title of this Ordinance without further authorization from Council.

Section 4. There exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor; however, in the event that the Mayor fails to sign this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

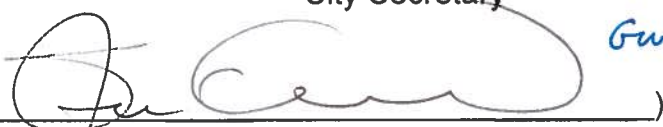
**PASSED AND ADOPTED** this 3rd day of December, 2014.

**APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is DEC 09 2014

  
\_\_\_\_\_  
City Secretary

(Prepared by Legal Dep't )  
(SEK; 8/28/14) Senior Assistant City Attorney  
(Requested by Andy Icken, Chief Development Officer, Office of the Mayor)  
(L.D. File No. )

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AYE	NO	
✓		<b>MAYOR PARKER</b>
••••	••••	<b>COUNCIL MEMBERS</b>
✓		STARDIG
✓		DAVIS
✓		COHEN
✓		BOYKINS
✓		MARTIN
✓		NGUYEN
	<b>ABSENT</b>	PENNINGTON
✓		GONZALEZ
✓		GALLEGOS
✓		LASTER
✓		GREEN
✓		COSTELLO
✓		ROBINSON
✓		KUBOSH
✓		BRADFORD
✓		CHRISTIE
CAPTION	ADOPTED	

**PUBLIC IMPROVEMENTS DEVELOPMENT AGREEMENT**

This Public Improvements Development Agreement ("Agreement") is made and entered into by and among the **CITY OF HOUSTON, TEXAS**, a Texas home-rule municipal corporation ("City"), **REINVESTMENT ZONE NUMBER TWENTY-THREE**, City of Houston, Texas ("Zone"), and **EAST END ON THE BAYOU, L.P.**, a Texas limited liability partnership ("Developer"), effective as of the date the City Controller countersigns this Agreement ("Effective Date"). The City, the Zone, and Developer may also be referred to in this Agreement singularly as a "Party" or collectively as "Parties."

**RECITALS**

**WHEREAS**, Developer has under contract to purchase certain tracts of land totaling approximately 2.96 acres located within the corporate limits of the City between Live Oak St., Nagel St., Middle St. and Freund Sts. north of Navigation Blvd., as more particularly described in **Exhibit A** attached hereto ("Property"); and

**WHEREAS**, Developer intends to develop, design, and construct improvements that include 73 single family units and public improvements on the Property ("Project") in two sections, Section 1 and Section 2, respectively; and

**WHEREAS**, the public improvements that Developer intends to serve the Property include construction of portions of Kennedy, North Nagle, Freund, Middle and N Live Oak Streets, an offsite water distribution system, landscaping and streetscape enhancements all as more particularly described in **Exhibit B** attached hereto; and

**WHEREAS**, Developer, in conjunction with partner homebuilder(s), intends to develop and construct an estimated \$23,500,000 in improvements to the Property, adding approximately \$2,567,710 in incremental tax revenue generated by the Property over the life of the Zone; and

**WHEREAS**, by City Ordinance No. 2011-900, as amended, the City created the Zone ("Ordinance") and appointed a Board of Directors to the Zone as provided by Chapter 311, Texas Tax Code, as amended; and

**WHEREAS**, pursuant to Chapter 311, Texas Tax Code, as amended, and by City Ordinance No. 2013-101, the Zone adopted and the City approved a project plan and reinvestment zone financing plan (as amended, "Project Plan") for the Zone that provides for the payment of the eligible project costs of the Public Improvements from the Tax Increment derived from the Property in the Zone in accordance with the terms of this Agreement; and

**WHEREAS**, the Property is located within the Zone's boundaries and is included in the Zone's Project Plan; and

**WHEREAS**, to induce Developer to develop and finance the construction of the Project for the public purposes of developing and diversifying the economy of the state

and to operate the Project in accordance with the performance measures set forth herein, which will generate increased ad valorem property tax revenues for the City and the Zone, the City and the Zone agree to reimburse to Developer the Reimbursement Amount, but not to exceed the Maximum Reimbursement Amount (as defined below); and

**WHEREAS**, to ensure that the benefits that the City and the Zone provide under this Agreement are utilized in a manner consistent with Chapter 311, Texas Tax Code, as amended, and the Zone's Project Plan, Developer agrees that its receipt of such benefits shall be conditioned upon Developer's satisfaction of certain conditions enumerated herein, including performance conditions relating to the development and construction of the Project; and

**NOW, THEREFORE**, in consideration of the promises and mutual agreements set forth herein, the City, the Zone, and Developer agree as follows:

## **ARTICLE I**

### **GENERAL TERMS; DEFINITIONS**

A. Incorporation of Recitals. The Recitals to this Agreement are hereby incorporated for all purposes.

B. Definitions and Terms. The terms "Agreement," "City," "Developer," "Effective Date," "Ordinance," "Project," "Project Plan," "Public Improvements," "Property," and "Zone," have the meanings given to such terms in the Recitals, and the following terms have the following meanings:

"Available Tax Increment" means, for each tax year during the Term, the amount of the Tax Increment collected by the City that is generated by the Property.

"Builder" shall mean and refer to any person or entity undertaking the construction of a residence on the Property or on any part thereof including the Developer.

"City Commitment" has the meaning set forth in Article VI, Section B of this Agreement.

"Chief Development Officer" means the Chief Development Officer in the Office of the Mayor, Economic Development or successor position, or his or her designee.

"Final Plans and Specifications" has the meaning set forth in Article III, Section C.

"Force Majeure" has the meaning set forth in Article VII, Section E of this Agreement.

"Maximum Reimbursement Amount" means the actual eligible Public Improvements Costs payable only from the Tax Increment generated by the Property and that may be reduced pursuant to Article III, Section B, Article VI, Section E, and

Article VII, Section D, and any other provisions of this Agreement. Notwithstanding anything herein to the contrary, however, the total Public Improvements Costs as defined herein shall not exceed \$1,238,068.

"Project Site Plan" means the site plan shown and described in **Exhibit C**.

"Public Improvements" means those certain public improvements described in **Exhibit B** that are (i) actually constructed, (ii) conveyed to and accepted by the City, if applicable, and (iii) otherwise open to the public or available for public use.

"Public Improvements Costs" means eligible project costs, as defined in Section 311.002, Texas Tax Code, as amended, of the Public Improvements, including (i) all costs paid or incurred by Developer in planning, designing, acquiring, constructing, and installing the Public Improvements; engineering, planning, architectural, survey, testing, and laboratory costs, bonding premiums, license fees, any land clearing and grading costs, advertising and other bidding costs, amounts due under construction contracts, costs of labor and material, and (ii) allowable financing costs.

"Allowable Financing Costs" is an amount equal to the lesser of actual interest incurred or 5% to be accrued throughout the Term of this Agreement, if the Public Improvements for Section 1 of the Project are completed within 18 months after the effective date of this agreement. If the Section 1 improvements are not completed within 18 months after the effective date of this agreement, the Developer may seek approval of an extension of time from the Chief Development Officer. If the extension is not granted, then includable financing costs are capped at the lesser of the amount actually accrued or 5% through the end of 18 months after the effective date.

"Public Works Director" means the City's Director of the Department of Public Works and Engineering, or his or her designee.

"Reimbursement Amount" means ninety-five percent (95%) of the Available Tax Increment for each tax year until tax year 2021, then eighty-five percent (85%) of the Available Tax Increment for each tax year thereafter, not to exceed the Maximum Reimbursement Amount.

"Reimbursement Date" means the date that each phase of the Public Improvements is conveyed and accepted by the City.

"Tax Increment" has the meaning set forth in Section 311.012 of the Texas Tax Code, as amended, and as applied to the Zone.

"Tax Increment Fund" means the fund created for the Zone pursuant to the Ordinance into which the Reimbursement Amount from the City will be deposited.

"Term" means the duration of this Agreement, commencing on the Effective Date and continuing until Developer has been reimbursed the Maximum Reimbursement Amount, but not to exceed fifteen years.

"Zone Board" means the Board of Directors of the Harrisburg Zone.

C. Singular and Plural. Words used herein in the singular, where the context so permits, also include the plural and vice versa. The definitions of words in the singular herein also apply to such words when used in the plural where the context so permits and vice versa.

## **ARTICLE II REPRESENTATIONS**

A. Representations of the City. The City hereby represents to Developer and the Zone that as of the date hereof:

The City is a duly created and existing municipal corporation and home-rule municipality of and under the laws of the State of Texas and is duly qualified and authorized to carry on the governmental functions and operations as contemplated by this Agreement.

The City has the power, authority, and legal right under the laws of the State of Texas and the City Charter to enter into and perform this Agreement and the execution, delivery and performance hereof (i) will not, to the best of its knowledge, violate any applicable judgment, order, law or regulation, and (ii) do not constitute a default under, or result in the creation of, any lien, charge, encumbrance or security interest upon any assets of the City under any agreement or instrument to which the City is a party or by which the City or its assets may be bound or affected.

This Agreement has been duly authorized, executed and delivered by the City and constitutes a legal, valid and binding obligation of the City, enforceable in accordance with its terms except to the extent that (i) the enforceability of such instruments may be limited by bankruptcy, reorganization, insolvency, moratorium or other similar laws of general application in effect from time to time relating to or affecting the enforcement of creditors' rights and (ii) certain equitable remedies including specific performance may be unavailable.

The execution, delivery, and performance of this Agreement by the City do not require the consent or approval of any person that has not been obtained.

B. Representations of Developer. Developer hereby represents to the City and the Zone that as of the date hereof:

Developer is duly authorized and existing and in good standing under the laws of the State of Texas, and is qualified to do business in the State of Texas.

Developer has the power, authority and legal right to enter into and perform its obligations set forth in this Agreement, and the execution, delivery and performance hereof, (i) have been duly authorized, and will not, to the best of its knowledge, violate any judgment, order, law or regulation applicable to Developer, and (ii) do not constitute a default under or result in the creation of, any lien, charge, encumbrance or security interest upon any assets of Developer under any agreement or instrument to which Developer is a party or by which Developer or its assets may be bound or affected.

This Agreement has been duly authorized, executed and delivered and constitutes a legal, valid and binding obligation of Developer, enforceable in accordance with its terms except to the extent that the enforceability of such instruments may be limited by bankruptcy, reorganization, insolvency, moratorium or other similar laws of general application in effect from time to time relating to or affecting the enforcement of creditors' rights.

C. Representations of the Zone. The Zone hereby represents to Developer and the City that as of the date hereof:

The Zone is a duly created and existing tax increment reinvestment zone of the City and under the laws of the State of Texas and is duly qualified and authorized to carry on the governmental functions and operations as contemplated by this Agreement.

The Zone has the power, authority, and legal right under the laws of the State of Texas and the City to enter into and perform this Agreement and the execution, delivery and performance hereof (i) will not, to the best of its knowledge, violate any applicable judgment, order, law or regulation, and (ii) do not constitute a default under, or result in the creation of, any lien, charge, encumbrance or security interest upon any assets of the Zone under any agreement or instrument to which the Zone is a party or by which the Zone or its assets may be bound or affected.

This Agreement has been duly authorized, executed and delivered by the Zone and constitutes a legal, valid and binding obligation of the Zone, enforceable in accordance with its terms except to the extent that (i) the enforceability of such instruments may be limited by bankruptcy, reorganization, insolvency, moratorium or other similar laws of general application in effect from time to time relating to or affecting the enforcement of creditors' rights and (ii) certain equitable remedies including specific performance may be unavailable.

The execution, delivery, and performance of this Agreement by the Zone do not require the consent or approval of any person that has not been obtained.

### **ARTICLE III THE PROJECT AND THE PUBLIC IMPROVEMENTS**

A. The Project. The Project is a 73-unit single family, residential development to be constructed in two sections on the Property, as more particularly described in the site plan attached hereto as **Exhibit C** ("Project Site Plan"). Developer may modify the Project Site Plan at any time, provided that Developer certifies to the City that the Project as modified will (i) maintain its character as a single family, residential development, and (ii) meet the commitments set forth in Article IV hereof. Developer agrees to comply with all City permitting requirements, including, but not limited to, Chapter 9 of the City's Department of Public Works and Engineering Infrastructure Design Manual and building permitting requirements.

B. The Public Improvements. **Exhibit B** sets forth the Public Improvements which may be developed to serve the Project. Developer may modify or remove any

Public Improvements or modify or change the estimated cost of the Public Improvements, provided that Developer must submit any proposed modification, removal or change to the Public Improvements to the Chief Development Officer for his or her review and comment. The Chief Development Officer shall have fourteen (14) days to review the proposed modification, removal, or change and provide comments to Developer.

Thereafter, the modification, removal, or change shall become effective upon Developer's certification to the City that after the modification, removal or change, Developer will still meet its commitments set forth in Article IV hereof. No such modification, removal, or change will entitle Developer to reimbursement for costs which exceed the Maximum Reimbursement Amount.

C. Standards and Approvals. Developer agrees that the plans and specifications for the Public Improvements shall be subject to the review and approval of all governmental entities with jurisdiction, including the City, for conformance with applicable legal requirements. Developer agrees to comply with all applicable legal requirements from such jurisdictions. Before commencing construction of any Public Improvements, Developer will submit to the Public Works Director all plans and specifications for the construction of the Public Improvements and shall obtain the Public Works Director's approval of the plans and specifications as in conformance with applicable legal requirements. All water wells, water meters, flushing valves, valves, pipes, and appurtenances thereto, must conform to the City's specifications. All water service lines, sewer service lines, lift stations, sewage treatment facilities, road facilities, and appurtenances thereto, must comply with the City's standard plans and specifications as amended from time to time. Prior to construction of any Public Improvements, Developer or Developer's engineer must give written notice to the Public Works Director stating the date that construction will be commenced. Upon review and approval of the plans and specifications of the Public Improvements by the City, which approval shall not be unreasonably withheld, such plans and specifications shall be deemed the final plans and specifications ("Final Plans and Specifications"). Construction of the Public Improvements must be substantially in accordance with the Final Plans and Specifications and with the City's applicable standards and specifications. The Public Works Director may conduct periodic, on-the-ground inspections of the Public Improvements during the progress of the construction and installation of the Public Improvements.

## **ARTICLE IV DEVELOPER COMMITMENTS**

In consideration of the City and the Zone agreeing to reimburse Developer the Reimbursement Amount in accordance with the terms and conditions of this Agreement, Developer agrees that the following conditions must be met in order to receive the Reimbursement Amount:

A. Construction of the Public Improvements. Developer shall commence construction of the Public Improvements within twenty-four (24) months from the

Effective Date of this Agreement and complete the entire Project within sixty (60) months from the Effective Date. Developer shall obtain and maintain all licenses, permits, and other governmental approvals and consents required by State or federal law and regulation or the City Charter or any City ordinance for the construction of the Public Improvements by Developer pursuant to this Agreement. All such Public Improvements shall be constructed substantially in accordance with plans and specifications approved by the Public Works Director pursuant to construction documentation approved by the Public Works Director.

B. Project and Public Improvements Funding. Within twelve (12) months after the Effective Date of this Agreement, Developer shall certify to the City that sufficient private funds and sources are available and/or have been expended to fully complete the Public Improvements.. Furthermore, Developer shall certify that agreements are in place with qualified partner homebuilder(s) in order to fully develop the proposed Project. Failure of Developer to timely provide such certification to the City shall constitute a breach of this Agreement.

C. Conveyance of the Public Improvements. Subject to Developer's right to modify or remove a Public Improvement in accordance with the provisions of Article III, Section B, as the acquisition and construction of the Public Improvements are completed and become operational, Developer shall convey (where applicable) such Public Improvements to the City, including rights-of-way.

D. Inspection; Transfer. Once construction of the Public Improvements is completed, City representatives shall inspect the same and, if the City finds that the Public Improvements have been completed in accordance with the Final Plans and Specifications or any modifications thereof, and in accordance with all applicable laws, rules, and regulations, and upon the City's receipt of a one-year maintenance bond, the City will accept the Public Improvements, free and clear of any liens in favor of Developer, whereupon the Public Improvements shall be operated and maintained by the City at its sole expense. Upon expiration of the maintenance bond, all warranties and other contract rights of Developer concerning the design, acquisition, construction, installation, and inspection of the Public Improvements to which such bond pertains shall transfer and be assigned to the City without further action by Developer.

E. Competitive Bidding. Construction contracts for the Public Improvements shall be let on a competitive bidding basis. After preparation of the Final Plans and Specifications and their approvals as required by this Agreement, Developer shall advertise for or solicit bids (as required by law applicable to the City) for construction as described in the Final Plans and Specifications. The Chief Development Officer shall be notified of, and invited to attend when applicable, pre-bid conferences, bid openings, and the award of contracts in accordance with the notice provision of Article VIII, Section B of this Agreement. If Developer has already advertised for, solicited bids for, or received bids for the construction as described in the Final Plans and Specifications prior to the Effective Date of this Agreement,, Developer shall submit to the Chief Development Officer for review any such advertisements, summary of pre-bid conferences and bid openings, and any contracts awarded. The City shall designate

from time to time, in writing, the persons who shall be its designated representatives. In the event of the failure of the City to designate representatives, the Director of Public Works and Engineering shall be the City's representative. Notwithstanding the foregoing provisions providing for construction contracts on a competitive bidding basis, in accordance with the requirements of Section 271.114(a), Local Government Code, the City has determined that the "competitive sealed proposals method," in accordance with Section 271.116, Local Government Code, provides the best value for the City and hereby delegates authority to Developer as its designated representative to take any and all actions required to implement such method. Developer reserves the right to reject all proposals and re-advertise for proposals if the proposals are not acceptable to Developer.

F. Performance Bonds. Developer shall require each contractor constructing the Public Improvements to furnish a performance bond in an amount equal to the full cost of Developer's construction contract with that contractor, conditioned on the contractor's full and timely performance under the construction contract. Developer and the City shall be dual obligees for each performance bond. The performance bond(s) must be in a form approved by the City Attorney and issued by a corporate surety authorized and admitted to write surety bonds in Texas. If the amount of the bond exceeds \$100,000, the surety must be listed on the current list of accepted sureties on federal bonds published by the United States Treasury Department or reinsured for any liability in excess of \$100,000 by a reinsurer listed on the U.S. Treasury list. The City hereby authorizes Developer to give notices and to make claims under and to enforce such bonds on behalf and for the benefit of the City following notice to the Chief Development Officer. All proceeds of such claims shall be deposited to the Tax Increment Fund and applied to reimburse Developer for Public Improvements Costs for which such bonds were issued.

G. Utilization of Local Contractors and Suppliers. Developer agrees to exercise commercially reasonable efforts to utilize local contractors and suppliers in the construction of the Project and the Public Improvements, with a goal of at least thirty percent (30%) of the total dollar amount of all construction contracts and supply agreements being paid to local contractors and suppliers. A contractor or supplier shall be considered as local if it has maintained an office within the City for at least one year.

H. Affirmative Action. Developer shall demonstrate good faith efforts to comply with the City's Affirmative Action program in the design and construction of the Project and the Public Improvements.

I. Participation of Disadvantaged Businesses. In constructing the Public Improvements pursuant to this Agreement, Developer is encouraged to review the City's Minority and Women Business Enterprise ("MWBE") program as set forth in Chapter 15, Article V of the City of Houston Code of Ordinances and comply with the requirements by making good faith efforts to award the maximum number of subcontracts and supply agreements to entities that are certified by the City as MWBEs. Developer shall, until two (2) years after the date of completion of the Public Improvements, maintain records showing as far as is practicable its contracts, subcontracts, supply agreements, and

other support with and to contractors and suppliers evidencing compliance with these provisions. Upon request by the Chief Development Officer, Developer shall provide reports to the City of its efforts under this Section in such form and manner as the Chief Development Officer may reasonably require.

J. Maintenance of Records. Developer shall be responsible for maintaining records of all costs incurred and payments made for the Project and the Public Improvements and records evidencing compliance with all Developer commitments required by this Article IV and shall provide the Zone with all such records for review and approval prior to payment of the Reimbursement Amount.

K. Taxes and Other Charges. Developer agrees, beginning upon completion of the Project and through the remainder of the Term, not to protest any valuation of the Property or the buildings and other structures located on the Property for ad valorem taxation below \$30,000,000 or file for an exemption or abatement from ad valorem taxation following the Effective Date of this Agreement. Developer agrees that the Property will be valued for taxation in accordance with Section 23.01, Texas Tax Code, as amended, and that it will not request such property to be valued for taxation on the basis of inventory as permitted by Section 23.12, Texas Tax Code. Upon request, Developer agrees to provide to the City and the Zone copies of all tax statements received from any taxing unit for the Property during the Term.

Developer further agrees that it will require all Builder and other investor purchasers, of the Property, in whole or in part, to agree to abide by the terms of this Section following the Effective Date of this Agreement. Developer shall pay, prior to delinquency, all taxes, assessments, and governmental charges of any kind whatsoever that may at any time be lawfully levied, assessed, charged, or imposed upon or against the Property.

## **ARTICLE V ADMINISTRATION OF THE ZONE**

A. Delegation of Powers. By approving and authorizing this Agreement, the City Council of the City delegates to the Zone Board all powers and duties of the City relating to implementation of the Project Plan, except the power of eminent domain, powers reserved to the City by Chapter 311, Texas Tax Code, as amended, and powers expressly reserved by the City pursuant to this Agreement.

B. Computation of Tax Increment. After receiving each certified assessment roll for the Zone, and each certified adjustment to the roll, of taxable property comprising or situated on the Property, the City shall calculate the captured appraised value, as defined in Section 311.012, Texas Tax Code, as amended, of the Property. Upon written request, the City shall provide to Developer a copy of each certified roll of taxable property comprising or situated on the Property and shall cooperate with Developer in correcting any roll as required to reflect the assessed value of all such taxable property.

C. Deposits to the Tax Increment Fund. The City shall deposit to the Tax Increment Fund, without counterclaim, except as expressly provided in this Agreement: (1) the Tax Increment attributable to the Property paid by any other taxing unit to the City or the Zone, and (2) the Tax Increment of the City attributable to the Property and required by Section 311.013, Texas Tax Code, as amended, to be deposited by the City into the Tax Increment Fund.

The City covenants and agrees that it will, as authorized by Chapter 311, Texas Tax Code, as amended, continuously collect the Tax Increment during the Term of this Agreement in the manner and to the maximum extent permitted by applicable law. The City also covenants and agrees that it will not permit a reduction in the Tax Increment, except as provided in this Agreement. In addition, the City covenants and agrees that it will not dissolve the Zone or terminate the Zone prior to the date established in the Ordinance, and that any repeal of the right and power to collect the Tax Increments will not be effective until all eligible Public Improvements Costs have been fully paid to Developer as provided in this Agreement. The City covenants and agrees that it will not permit an amendment to the Project Plan that reduces, or negatively affects in any way, the full payment of all Public Improvements Costs to Developer as provided in this Agreement. The obligation of the City to make deposits to the Tax Increment Fund as provided herein and to reimburse Developer as provided in this Agreement shall be absolute and unconditional, and until such time as all eligible Public Improvements Costs have been fully paid to Developer as provided in this Agreement, the City will not suspend or discontinue any payments provided for in this Agreement.

D. Administrative Services and Expenses. The City and the Zone's obligation to pay the Reimbursement Amount is limited to the Available Tax Increment. The rights of Developer in and to the Available Tax Increment is subject only to (1) the rights of any holders of obligations that have been issued previously by the City and that are payable from and secured by general levy of ad valorem taxes through the taxing jurisdiction of the City, and (2) the administrative expenses of the Zone as budgeted and approved by the City Council on an annual basis. The obligation of the City and the Zone to reimburse Developer from the Available Tax Increment is absolute and unconditional until such time as the eligible Public Improvements Costs have been fully reimbursed; however, such obligation does not give rise to a charge against the City's general credit or taxing powers, or that of any other taxing unit, and is payable only as provided in this Agreement. Developer, its successors, and assigns shall have no right to demand payment of the Reimbursement Amount from any Zone funds other than the Available Tax Increment.

## **ARTICLE VI REIMBURSEMENT**

A. Calculation of Reimbursement Amount. The Reimbursement Amount is defined in Article I.

B. Payment of Reimbursement Amounts. Beginning on the Reimbursement Date and continuing through each calendar year throughout the Term of this Agreement

and so long as no Event of Default by Developer then exists, the City shall transfer the Reimbursement Amount to the Tax Increment Fund ("City Commitment"). The City shall reimburse Developer for eligible Public Improvements Costs from the Available Tax Increment by September 1<sup>st</sup> of each year. The City Commitment is an unconditional obligation of payment by the City solely from the Available Tax Increment, subject to the terms and conditions of this Agreement. Except as otherwise expressly set forth in this Agreement, reimbursement to Developer of the Reimbursement Amount is not subject to any reduction. The City and the Zone shall never be obligated to make any reimbursement to Developer from any funds other than the Available Tax Increment.

C. Approval of Public Improvements Costs. Prior to payment of the Reimbursement Amount, the City and the Zone shall review all Public Improvements Costs submitted by Developer for approval, and determine their eligibility pursuant to Chapter 311, Texas Tax Code, as amended, and this Agreement. Developer shall provide to the auditor selected by the Zone Board an accounting of all Public Improvements Costs paid or incurred by Developer, excluding interest, together with invoices or such other documentation as the auditor or the Zone Board may reasonably request to evidence payment or incurrence of the Public Improvements Costs. The City and the Zone Board will review and approve for reimbursement to Developer each eligible Public Improvements Cost identified in the accounting.

D. Ineligible Public Improvements Costs. Developer shall bear all risk that any of the Public Improvements Costs may be determined to be ineligible pursuant to Chapter 311, Texas Tax Code, as amended, by the State Attorney General, or by a court of law with competent jurisdiction, and the City and the Zone shall not be obligated to reimburse Developer for any ineligible Public Improvements Costs. In the event that a Public Improvements Cost is determined to be ineligible under Chapter 311, Texas Tax Code, as amended, after the City and the Zone have reimbursed Developer for the Public Improvements Cost in accordance with this Agreement, the amount of the ineligible Public Improvements Cost reimbursed by the City and the Zone shall be offset against future reimbursements owed to Developer by the City and the Zone, or, if no further reimbursements are to be made by the City and the Zone, Developer shall reimburse the City and the Zone for the ineligible Public Improvements Cost reimbursement within thirty (30) days after receipt of an invoice from the City or the Zone.

E. Noncompliance; Reduction. Notwithstanding anything to the contrary in this Agreement, if, following the construction of any Public Improvement, Developer fails to fulfill and comply with its obligations related to such Public Improvement set forth in Article IV, as applicable (including but not limited to Developer's obligation to convey such Public Improvement to the City) and such failure results in an Event of Default, the City shall not remain obligated to transfer the Reimbursement Amount for such Public Improvement to the Tax Increment Fund, and the Maximum Reimbursement Amount will be reduced by an amount equal to the total cost allocated to such Public Improvement.

F. Capital Improvements Budget. The City and the Zone covenant and agree that each will timely approve annual budgets for the Zone that include the reimbursement to Developer of the eligible Public Improvements Costs up to the Reimbursement Amount. Notwithstanding the foregoing, however, the failure of the City or the Zone to timely approve an annual budget for the Zone shall in no way delay, postpone, reduce, or otherwise negatively affect a payment to Developer pursuant to this Agreement.

## **ARTICLE VII DEFAULT AND REMEDY**

A. Payment Default. The City agrees that its failure to transfer the Reimbursement Amount when due is an Event of Default by the City ("Payment Default") and that Developer shall be entitled to any and all of the remedies available in this Article or otherwise at law or equity.

B. General Events of Default. In addition, an "Event of Default" by a Party shall be deemed to exist under this Agreement if such Party fails to materially perform, observe or comply with any of the commitments, covenants, agreements or obligations set forth in this Agreement and such failure continues beyond the cure period described in Article VII, Section C of this Agreement.

C. Notice. Before the failure of any Party to perform its obligations under this Agreement, except in the case of a Payment Default, is deemed to be an Event of Default, the Party claiming such failure shall give written notice to the Party alleged to have failed to perform of the alleged failure and shall demand performance. No Event of Default, except for a Payment Default, may be found to have occurred if such failure is cured within sixty (60) days after such notice, subject to extension as a result of Force Majeure.

D. Remedies. If an Event of Default by the City occurs, Developer shall have all rights and remedies to which it is entitled under this Agreement and under all applicable laws. Notwithstanding anything which is or may appear to be to the contrary, nothing in this Agreement shall be construed as a waiver of the City's immunity from suit. If an Event of Default by Developer occurs, then the City, as its sole and exclusive remedy (as expressly provided herein) may terminate this Agreement by written notice to Developer. Upon such termination, the City shall have no further payment obligations to Developer under this Agreement.

The City Attorney, or his or her designee, may enforce all rights and obligations of the City or the Zone under this Agreement, without further authorization. Developer shall provide to the City all documents and records that the City may reasonably request to assist in determining Developer's compliance with this Agreement, except those documents made confidential by federal or State law or regulation.

E. Force Majeure. Notwithstanding anything in this Agreement which is or may appear to be to the contrary, if the performance of any covenant or obligation to be performed hereunder by any Party (except for a Payment Default) is delayed as a result of circumstances which are beyond the reasonable control of such Party (which

circumstances may include, without limitation, pending or threatened litigation, acts of God, war, acts of civil disobedience, fire or other casualty, shortage of materials, adverse weather conditions [such as, by way of illustration and not limitation, severe rain storms or below freezing temperatures, hurricanes, or tornadoes] labor action, strikes, or similar acts) the time for such performance shall be extended by the amount of time of such delay ("Force Majeure").

## ARTICLE VIII INSURANCE, INDEMNIFICATION, AND RELEASE

Developer shall maintain insurance coverage continuously until construction of all Public Improvements is completed or abandoned, and Developer shall contract with each construction contractor engaged by it hereunder to maintain (and to cause each of its subcontractors to maintain) insurance coverage during the term of its contract, in each case in accordance with the terms of this Section 5.01 through any combination of primary and excess coverage and, in the case of "claims made" coverage, for an additional two (2) years thereafter.

**A. Risks and Limits or Liability.** The insurance required by this Section shall insure against the following risks in at least the following amounts:

Coverage	Limit of Liability
Workers' Compensation Employer's Liability	Statutory Bodily Injury by Accident \$100,000 (each accident) Bodily Injury by Disease \$500,000 (policy limit) Bodily Injury by Disease \$100,000 (each employee)
Commercial General Liability: Including Broad Form Coverage, Contractual Liability, Bodily and Personal Injury, and Completed Operations (for a period of one year after completion of work	Bodily Injury and Property Damage, Combined Units of \$500,000 each Occurrence and \$1,000,000 Aggregate
Automobile Liability Insurance (for vehicles used in performing under this Agreement, including Employer's Non-Ownership and Hired Auto Coverage	\$500,000 Combined Single Unit per Occurrence
Professional Liability Coverage (for professional service contract only)	\$500,000 per occurrence and \$1,000,000 aggregate

Defense costs are excluded from the face amount of the policy. Aggregate Limits are per 12-month policy period unless otherwise indicated. If the amount of any contract awarded by Developer to construct Public Improvements shall exceed \$1,000,000, Developer shall contract with the contractor to maintain Commercial General Liability coverage for at least twice the combined minimum limits specified above.

**B. Form of Policies.** The Chief Development Officer may approve, in the exercise of commercially reasonable discretion, the form of the insurance policies, but

nothing the Chief Development Officer does or fails to do relieves Developer of its obligation to provide the required coverage under this Agreement. The Chief Development Officer's actions or inactions do not waive the City's rights under this Agreement.

**C. Issuer of Policies.** The issuer of each policy shall have a certificate of authority to transact insurance business in the State or a Best's rating of at least B+ and a Best's Financial Size Category of Class VI or better, according to the most current edition *Best's Key Rating Guide, Property-Casualty United States*.

**D. Insured Parties.** Each policy, except those for Workers' Compensation, Employer's Liability, and Professional Liability, must name the City (and its officers, agents, and employees) as additional insured parties on the original policy and all renewals or replacements.

**E. Deductibles.** Developer shall be responsible for and bear (or shall contract with each applicable contractor to bear and assume) any claims or losses to the extent of any deductible amounts and waives (and shall contract with each contractor to waive) any claim it may have for such deductibles against the City, its officers, agents, or employees.

**F. Cancellation.** Each policy must state that it may not be canceled, materially modified, or nonrenewed unless the insurance company gives the Chief Development Officer thirty (30) days' advance written notice. Developer shall (and shall contract with each contractor to) give written notice to the Chief Development Officer within five (5) days of the date on which total claims by any party against such person reduce the aggregate amount of coverage below the amounts required by this Agreement. In the alternative, the policy may contain an endorsement establishing a policy aggregate for the particular project or location subject to this Agreement.

**G. Subrogation.** Each policy must contain an endorsement to the effect that the issuer waives any claim or right of subrogation to recover against the City, its officers, agents, or employees.

**H. Primary Insurance Endorsement.** Each policy, except Workers' Compensation and Professional Liability (if any), must contain an endorsement that the policy is primary to any other insurance available to the additional insured with respect to claims arising under this Agreement.

**I. Liability for Premium.** Developer shall pay (or shall contract with contractors to pay) all insurance premiums for coverage required by this Section, and the City shall not be obligated to pay any premiums.

**J. Proof of Insurance.** Promptly after Developer's acquisition of the Property and from time to time during the term of this Agreement at the request of the Chief Development Officer, Developer shall furnish the Chief Development Officer with certificates of insurance maintained by Developer in accordance with this Section, along with an affidavit from Developer confirming that the certificates accurately reflect the insurance coverage maintained. If requested in writing by the Chief Development Officer, Developer shall furnish the City with certified copies of Developer's actual insurance policies. If Developer does not comply with the requirements of this Section,

the Chief Development Officer, at his or her sole discretion, may (1) suspend performance by the City and the Zone hereunder and begin procedures to terminate this Agreement for default in accordance with Article VII, or (2) purchase the required insurance with City or Zone funds and deduct the cost of the premiums from amounts due to Developer under this Agreement. The City shall never waive or be estopped to assert its right to terminate this Agreement because of its acts or omissions regarding its review of insurance documents.

### **INDEMNIFICATION AND RELEASE**

**DEVELOPER SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY AND THE ZONE, THEIR AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY, THE "INDEMNIFIED PERSONS") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:**

**A. DEVELOPER'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY, "THE DEVELOPER'S") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS; AND**

**B. THE INDEMNIFIED PERSONS' AND DEVELOPER'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER OR NOT DEVELOPER IS IMMUNE FROM LIABILITY.**

If an Indemnified Person or Developer receives notice of any claim or circumstance which could give rise to an indemnified loss, the receiving Party shall give written notice to the other Party within ten (10) days. The notice must include a description of the indemnification event in reasonable detail, the basis on which indemnification may be due, and the anticipated amount of the indemnified loss. This notice shall not stop or prevent an Indemnified Person from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If an Indemnified Person does not provide this notice within the ten (10) day period, it does not waive any right to indemnification except to the extent that Developer is prejudiced, suffers loss, or incurs expense because of the delay.

Developer shall assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the Indemnified Person. Developer shall then control the defense and any negotiations to settle the claim. Within ten (10) days after receiving written notice of the indemnification request, Developer shall advise the Indemnified Person as to whether or not it will defend the claim. If Developer does not assume the defense, the Indemnified Person shall assume and control the defense, and all defense expenses incurred by it shall constitute an indemnification loss.

If Developer elects to defend a claim, the Indemnified Person may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Developer may settle the claim without the consent or agreement of the Indemnified Person, unless the settlement (i) would result in injunctive relief or other equitable remedies or otherwise require the Indemnified Person to comply with restrictions or limitations that adversely affect the Indemnified Person; (ii) would require the Indemnified Person to pay amounts that Developer does not fund in full; or (iii) would not result in the Indemnified Person's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

**DEVELOPER RELEASES EACH INDEMNIFIED PERSON FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE INDEMNIFIED PERSON'S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE INDEMNIFIED PERSON'S STRICT PRODUCES LIABILITY OR STRICT STATUTORY LIABILITY. DEVELOPER SHALL REQUIRE ALL CONTRACTORS ENGAGED BY IT TO CONSTRUCT PUBLIC IMPROVEMENTS (AND THEIR SUBCONTRACTORS) TO RELEASE AND INDEMNIFY THE INDEMNIFIED PERSONS TO THE SAME EXTENT AND IN SUBSTANTIALLY THE SAME FORM AS ITS RELEASE OF AND INDEMNITY TO THE INDEMNIFIED PERSONS HEREUNDER.**

## **ARTICLE IX GENERAL PROVISIONS**

A. Time of the Essence. Time is of the essence in the performance of this Agreement. The Parties will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation, including, without limitation, subject to Developer's compliance with all applicable laws, expeditiously processing permits and approvals to facilitate Developer's timely procurement of all entitlements required for the Project and the Public Improvements.

B. Notices. Any notice sent pursuant to this Agreement (except as otherwise expressly required) shall be in writing and mailed by U.S. Mail or sent by rapid transmission confirmed by mailing written confirmation at substantially the same time as such rapid transmission, or personally delivered to an officer of the receiving Party at the following addresses:

If to Developer:

East End on the Bayou LP  
5599 San Felipe, #911  
Houston, TX 77056

Attention: Antonio Padua

*With a copy to:*

Alejandro Padua  
Attorney at Law  
Padua Law Firm  
5599 San Felipe, #911  
Houston, TX 77056

If to the City or the Zone:

Chief Development Officer, Office of the Mayor  
City of Houston, Texas  
P. O. Box 1562  
Houston, Texas 77251-1562

*With a copy to:*

City Attorney  
City of Houston, Texas  
900 Bagby, 4<sup>th</sup> Floor  
City Hall Annex  
Houston, Texas 77002

Notice shall be deemed to have been received on the date such notice is personally delivered or three (3) days from the date such notice is mailed or sent by rapid transmission. Any Party may change its address by written notice in accordance with this Section. Any communication addressed and mailed in accordance with this Section shall be deemed to be given when so mailed, any notice so sent by rapid transmission shall be deemed to be given when receipt of such transmission is acknowledged, and any communication so delivered in person shall be deemed to be given when received for by, or actually received by, an authorized officer of Developer, the Zone, or the City, as the case may be.

C. Developer Operations and Employees. Developer shall perform its obligations under this Agreement as an independent contractor and not as an employee or agent of the City or the Zone. All personnel supplied or used by Developer in the performance of its obligations hereunder shall be deemed employees or subcontractors of Developer and shall not be considered employees, agents, or subcontractors of the City or the Zone for any purpose whatsoever. As among the City, the Zone, and Developer, Developer, or in the case of subcontracts, the subcontractors, shall be solely responsible for the compensation of all such personnel, for the withholding of income, social security, and other payroll taxes, and for the coverage of all workers' compensation benefits.

D. Amendments and Waivers. Any provision of this Agreement may be amended or waived if such amendment or waiver is in writing and is approved by Developer, the Zone, and the City. No course of dealing on the part of Developer, the

Zone, or the City nor any failure or delay by Developer, the Zone, or the City with respect to exercising any right, power or privilege pursuant to this Agreement shall operate as a waiver thereof, except as otherwise provided in this Section.

E. Severability. In the event that any of the provisions contained in this Agreement shall be held unenforceable in any respect, such unenforceability shall not affect any other provisions of this Agreement and, to that end, all provisions, covenants, agreements or portions of this Agreement are declared to be severable.

F. Successors and Assigns. No Party shall have the right to assign its rights under this Agreement or any interest herein without the prior written consent of the other Parties, except that Developer may assign its rights and responsibilities hereunder to (i) a lending institution of all of Developer's rights hereunder as security for repayment of one or more loans to finance the construction or ownership of any component of the Property, (ii) any related, affiliated or subsidiary entity to which substantially all of its assets, liabilities and its rights to proceed with development of the Project and the Public Improvements are transferred or (iii) any person or entity to which Developer assigns, subleases, or otherwise conveys its interest in the Property, provided that any assignee under (ii) or (iii) agrees in writing to assume Developer's obligations under this Agreement during such assignee's period of ownership. Upon any assignment permitted hereunder, the assigning Developer shall be released from all liability and obligations under this Agreement arising upon or after the effective date of such assignment. Neither the City nor the Zone shall unreasonably withhold its written consent. The City's Chief Development Officer, or his or her designee, may consent to a qualifying assignment under this Section on behalf of the City. The Zone's Chairman of the Board may consent to a qualifying assignment under this Section on behalf of the Zone.

G. Exhibits, Headings, Titles of Articles, Sections and Subsections. The exhibits attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein, except that in the event of any conflict between any of the provisions of such exhibits and the provisions of this Agreement, the provisions of this Agreement shall prevail. All titles or headings are only for the convenience of the Parties and shall not be construed to have any effect or meaning as to the agreement among the Parties hereto. Any reference herein to a section or subsection shall be considered a reference to such section or subsection of this Agreement unless otherwise stated. Any reference herein to an exhibit shall be considered a reference to the applicable exhibit attached hereto unless otherwise stated.

H. Applicable Law. This Agreement is a contract made under and shall, be construed in accordance with and governed by the laws of the United States of America and the State of Texas, and any actions concerning this Agreement shall be brought in either the State Courts of Harris County, Texas, or the United States District Court for the Southern District of Texas.

I. Entire Agreement. This Agreement represents the final agreement among the Parties and may not be contradicted by evidence of prior, contemporaneous, or

subsequent oral agreements of the Parties. There are no unwritten oral agreements among the Parties.

J. Approval by the Parties. Whenever this Agreement requires or permits approval or consent to be hereafter given by any of the Parties, the Parties agree that such approval or consent shall not be unreasonably withheld or delayed.

K. Interpretation. This Agreement has been jointly negotiated by the Parties and shall not be construed against a Party because that Party may have assumed primary responsibility for the drafting of this Agreement.

L. Conflicts with Ordinances. The Parties agree that, in the event of a conflict between the provisions of this Agreement and any City ordinance or regulation by any other agency over which the City has control, whether heretofore or hereafter adopted, the provisions of this Agreement shall govern matters addressed by this Agreement.


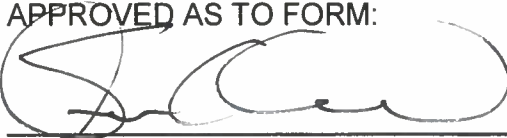
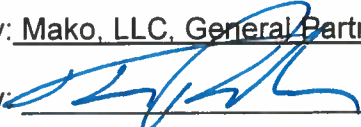


M. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

N. Estoppel Certificates. Within fifteen (15) business days after a written request from time to time by Developer, but at no charge for only the first two (2) requests in any calendar year, the City and the Zone shall execute and deliver a letter certifying that this Agreement is in full force and effect without an Event of Default or notice of failure to perform under this Agreement (or if an Event of Default exists or a notice of failure to perform under this Agreement has been given, the nature of the Event of Default or failure, and curative action which should be undertaken to cure same), the remaining term of this Agreement, the amount paid and/or subject to payment to Developer under this Agreement, and such other matters related to this Agreement as may be reasonably requested by Developer. After the second such request in a calendar year, the City may charge a reasonable fee, not to exceed \$1000.00 per letter.

O. Acquisition of the Property by Developer. If Developer has not acquired the Property by December 31, 2014, either Developer or the City may terminate this Agreement upon at least ten (10) days prior written notice of termination to the other Parties; and upon such termination, none of the Parties shall have any further obligation or liability hereunder (other than with respect to obligations hereunder that expressly survive the termination of this Agreement).

[EXECUTION PAGE FOLLOWS]

IN TESTIMONY OF WHICH this instrument has been executed in multiple counterparts, each of equal dignity and effect, on behalf of the Developer, the Zone, and the City, effective as of the Effective Date defined herein.

<b>CITY:</b>  CITY OF HOUSTON, a Texas home-rule municipal corporation  _____ Mayor  ATTEST/SEAL:  _____ City Secretary  COUNTERSIGNED:  _____ City Controller  Approved:  _____ Chief Development Officer  APPROVED AS TO FORM:  _____ Steven Kirkland Senior Assistant City Attorney	<b>DEVELOPER:</b>  East End on the Bayou, L.P.  By: <u>Mako, LLC, General Partner</u> By:  _____ Name: <u>Antonio Padua</u>  Title: <u>Manager</u>  Date: <u>8/18/14</u>  ZONE:  Reinvestment Zone Number Twenty-Three, City of Houston, Texas  By:  _____ Name: _____  Title: _____  Date: <u>11-<del>18</del>-14</u>  ATTEST:  By:  _____ Name: _____  Title: _____  Date: <u>11/6/2014</u>
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**EXHIBIT A**

**DESCRIPTION OF PROPERTY**

**EXHIBIT A**  
Legal Description

Tract I:

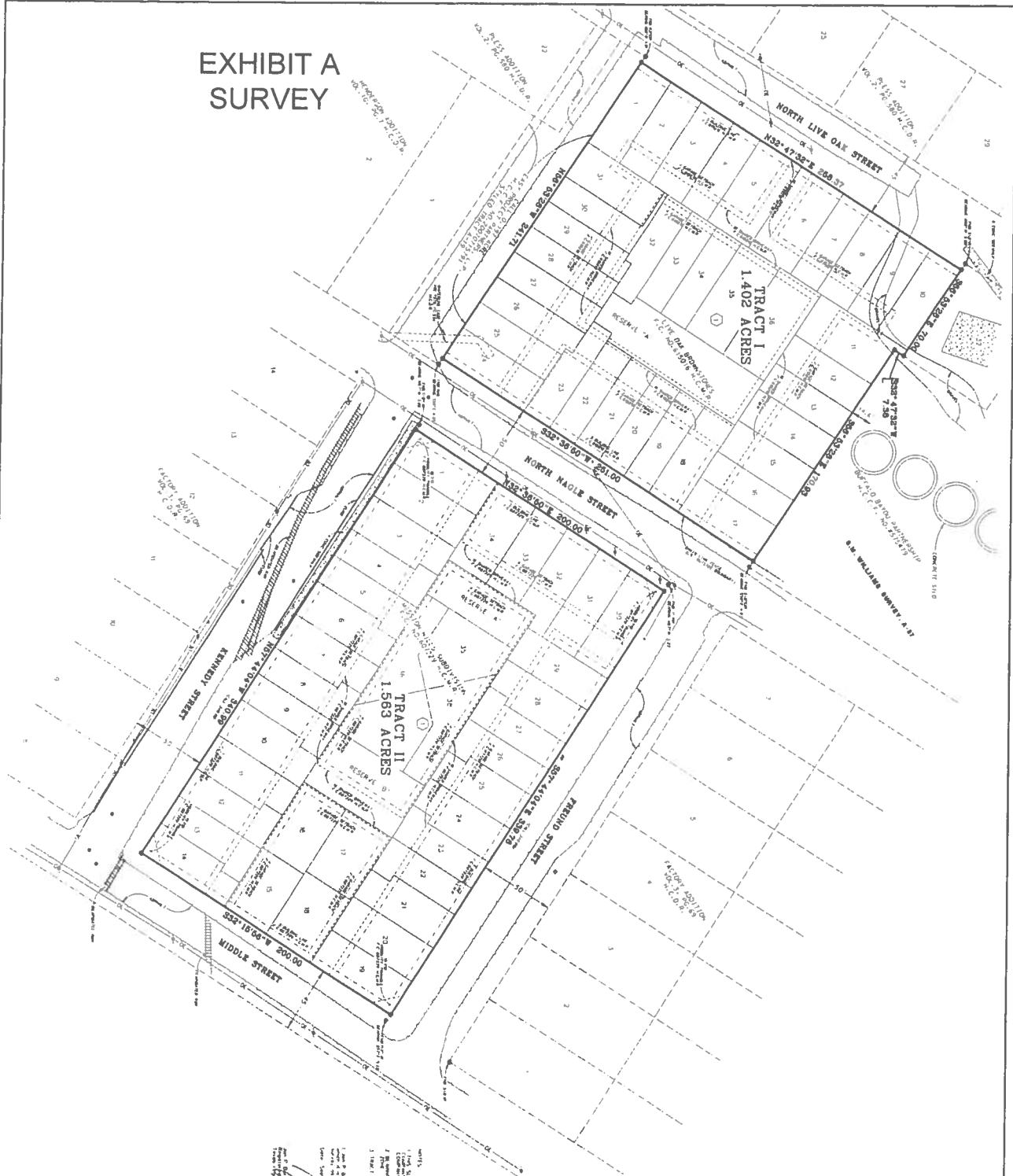
All of Lots 1 through 38, inclusive, and all of Restricted Reserves "A" and "B" of MISSION HILLS SUBDIVISION, which aggregates all of said subdivision, a subdivision in Harris County, Texas, according to the map or plat thereof recorded at Film Code No. 607229 of the Map Records of Harris County, Texas.

Tract II:

All of LIVE OAK BROWNSTONES, according to the map or plat thereof recorded in Film Code No. 615016 of the Map Records, Harris County, Texas.

(Tracts I and II will be re-platted, and the new legal description will be automatically substituted herein upon recordation of the plat or plats)

# EXHIBIT A SURVEY



I, the undersigned, being a duly qualified and licensed Professional Engineer in the State of Texas, do hereby certify that the foregoing is a true and correct copy of the original survey as shown to me by the owner thereof, and that the same is a true and correct copy of the original survey as shown to me by the owner thereof, and that the same is a true and correct copy of the original survey as shown to me by the owner thereof, and that the same is a true and correct copy of the original survey as shown to me by the owner thereof.

Date of Survey: 11/15/2011  
 Date of Recording: 11/15/2011  
 Surveyor: [Signature]  
 License No.: 10000



PART OF SURVEY  
**TRACT I - 1,402 ACRES**  
**TRACT II - 1,563 ACRES**

UMC, LIVE OAK BRONCHIOSIS S.A. SUBDIVISION, RECORD D  
 #1 & LUBBOCK HIC MARK AND WISDOM HILLS SUBDIVISION,  
 A SUBDIVISION HELD UNDER M.C. AND BOSTON HIC MARK  
 LOCATED IN TARRANT COUNTY, TEXAS

**GBI PARTNERS L.P.**  
**ENGINEERING AND SURVEYING**  
 17405 SOUTH GREENWOOD AVE SUITE 100  
 FORT WORTH, TEXAS 76140  
 TEL: 817-440-1111 FAX: 817-440-1112  
 WWW.GBIENGINEERING.COM

SCALE: 1" = 400'  
 DATE: 11/15/2011  
 SHEET NO.: 1 OF 1

**EXHIBIT B**

**LIST OF PUBLIC IMPROVEMENTS – PHASE 1**

**LIST OF PUBLIC IMPROVEMENTS – PHASE 2**

**EXHIBIT B-1  
OFFSITE IMPROVEMENTS- SECTION 1**

**TIRZ Costs in Connection with East End on the Bayou Development, Section 1**

**PRELIMINARY CONSTRUCTION COST ESTIMATE**

April 4, 2014

Item #	Item Description	Quantity	Unit	Unit Price	Cost
<b>001 OFFSITE WATER DISTRIBUTION SYSTEM</b>					
A.	8" C-900 Water Line	638	LF	\$30.00	\$19,140.00
B.	Tie into Existing Water Line	2	EA	\$750.00	\$1,500.00
C.	8" x 8" Tapping Sleeve and Valve	2	EA	\$1,500.00	\$3,000.00
D.	8" Gate Valve and Box	2	EA	\$1,000.00	\$2,000.00
E.	Fire Hydrant	2	EA	\$1,000.00	\$2,000.00
F.	3/4" Service Leads	37	EA	\$500.00	\$18,500.00
G.	Water Meter	37	EA	\$200.00	\$7,400.00
	<b>TOTAL WATER DISTRIBUTION SYSTEM</b>				<b>\$53,540.00</b>
<b>002 OFFSITE WASTEWATER COLLECTION SYSTEM</b>					
A.	8" SDR-26 Sanitary Sewer	218	LF	\$60.00	\$13,080.00
B.	Sanitary Sewer Lead with Clean Out	37	EA	\$500.00	\$18,500.00
C.	Core drilled Connection to Manhole using Resilient / Flexible Water tight Connectors	1	EA	\$1,500.00	\$1,500.00
D.	COH Sanitary Sewer Manhole	2	EA	\$1,500.00	\$3,000.00
	<b>TOTAL WASTEWATER COLLECTION SYSTEM</b>				<b>\$36,080.00</b>
<b>003 OFFSITE STORM WATER COLLECTION SYSTEM</b>					
A.	24" RCP Storm Sewer	649	LF	\$60.00	\$38,940.00
B.	Type "BB" Inlet	4	EA	\$1,500.00	\$6,000.00
C.	Type "A" Inlet	7	EA	\$1,500.00	\$10,500.00
D.	Connect to Existing Storm Sewer Manhole	1	EA	\$750.00	\$750.00
E.	Storm Sewer Manhole	1	EA	\$1,500.00	\$1,500.00
F.	Extra Depth for Manhole (greater than 8')	5	VF	\$100.00	\$500.00
	<b>TOTAL WASTEWATER COLLECTION SYSTEM</b>				<b>\$58,190.00</b>
<b>004 LANDSCAPING AND HARDSCAPING ALONG PERMITER, RIGHT OF WAYS AND PARK AREAS</b>					
A.	Metal Fence along Property / ROW line	1,000	LF	\$28.00	\$28,000.00
B.	Gate operators (sliding gates to meet fire department codes)	5	EA	\$7,500.00	\$37,500.00
C.	Landscaping on ROW, Perimeters, and BBP Park, Pedestrian Gates	1	LS	\$20,000.00	\$20,000.00
D.	Sidewalks on public right of way (~ included in Offsite Paving Budget)	0	N/A	\$0.00	\$0.00
	<b>LANDSCAPING AND HARDSCAPING</b>				<b>\$85,500.00</b>
<b>005 OFFSITE ROAD IMPROVEMENTS BY DEVELOPER*</b>					
A.	Phase I *	1	LS	\$223,933.33	\$223,933.33
	<b>OFFSITE ROAD IMPROVEMENTS</b>				<b>\$223,933.33</b>
	* Please refer to Engineer's Preliminary Construction Estimates for more detail and to map for visual representation of the various phases.				
<b>006 ENVIRONMENTAL AND GEOTECHNICAL</b>					
A.	SWPPP Reinforced Filter Fabric Fence with Steel Fence Posts and 2-Inch x 4-Inch, 12-Gauge Galvanized Welded Wire Mesh (installation and maintenance) on Sections 1	1,080	LF	\$2.50	\$2,700.00
B.	Stabilized Construction Exit on Sections 1	1	EA	\$1,000.00	\$1,000.00

**EXHIBIT B-1  
OFFSITE IMPROVEMENTS- SECTION 1**

Item #	Item Description	Quantity	Unit	Unit Price	Cost
C.	Inlet/Catch Basin Storm Sewer Protection Barriers on sections 1	11	EA	\$150.00	\$1,650.00
D.	Storm Water Pollution Prevention Plan Compliance (including SWPPP implementation, performing project site inspections, completing inspection reports, filing notices, posting permits, certificates and notices, installation of new control measures, maintenance of existing control measures, etc.)	1	LS	\$5,000.00	\$5,000.00
E.	Phase I Environmental Site Assessments, Soils Studies, Geotechnical Reports, Construction Materials Testing,	1	EACH	\$15,000.00	\$5,000.00
	<b>Total Environmental and Geotechnical</b>				<b>\$15,350.00</b>
<b>007 WATER AND WASTEWATER IMPACT CONNECTION FEES</b>					
A.	Section 1 *	37	EA	\$1,798.54	\$66,545.98
	<b>TOTAL WASTEWATER COLLECTION SYSTEM</b>				<b>\$66,545.98</b>
	* Based on current City of Houston rates for Impact fees				
<b>008 TIRZ AGREEMENTS AND CONSULTING</b>					
A.	TIRZ packaging, consulting, coordination, legal, development agreement, etc.	1	LS	\$25,000.00	\$25,000.00
B.	Miscellaneous administrative costs	1	LS	\$5,000.00	\$5,000.00
	<b>TOTAL WASTEWATER COLLECTION SYSTEM</b>				<b>\$30,000.00</b>
<b>PRELIMINARY CONSTRUCTION COST ESTIMATE</b>					
001	Offsite Water Distribution System				\$53,540.00
002	Offsite Wastewater Collection System				\$36,080.00
003	Offsite Stormwater Collection Improvements				\$58,190.00
004	Landscaping and Hardscaping				\$85,500.00
005	Offsite Road Improvements by Developer				\$223,933.33
	<b>Sub-Total Construction</b>				<b>\$457,243.33</b>
	Contingencies (20%)				\$91,448.67
	<b>Total Construction</b>				<b>\$548,692.00</b>
	Engineering & Inspection (12%)				\$65,843.04
	Surveying/Staking i.e. Topo, Control, Construction Staking				\$10,973.84
	Material Testing				\$10,973.84
	Landplanning, Platting and Permitting on Sections 1				\$12,000.00
006	<b>Environmental and Geotechnical</b>				<b>\$15,350.00</b>
007	<b>Water and Wastewater Impact Fees</b>				<b>\$66,545.98</b>
008	<b>TIRZ AGREEMENTS</b>				<b>\$30,000.00</b>
<b>TOTAL PRELIMINARY CONSTRUCTION COST ESTIMATE</b>					<b>\$760,378.70</b>

**EXHIBIT B-2  
OFFSITE IMPROVEMENTS- SECTION 2**

**TIRZ Costs in Connection with East End on the Bayou Development, Section 2**

PRELIMINARY CONSTRUCTION COST ESTIMATE  
January 23, 2014

Item #	Item Description	Quantity	Unit	Unit Price	Cost
<b>001 OFFSITE WATER DISTRIBUTION SYSTEM</b>					
A.	8" x 8" Tapping Sleeve and Valve - Phase Two	2	EA	\$1,500.00	\$3,000.00
B.	8" Gate Valve and Box - Phase Two	3	EA	\$1,000.00	\$3,000.00
C.	8-Inch C-900 PVC Water Line - Phase Two	250	LF	\$30.00	\$15,200.00
D.	Fire Hydrant including appurtenances - Two	4	EA	\$2,000.00	\$2,000.00
	<b>TOTAL WATER DISTRIBUTION SYSTEM</b>				<b>\$23,200.00</b>
<b>002 OFFSITE WASTEWATER COLLECTION SYSTEM</b>					
A.	8-Inch SDR-26, PVC Sanitary Sewer - Phase Two	150	LF	\$60.00	\$9,000.00
B.	Core Drilled Connection to Manhole using Resilient/ Flexible Water Tight Connectors - Phase Two	1	EA	\$1,500.00	\$1,500.00
C.	Sanitary Sewer MH - Phase Two	1	EA	\$1,500.00	\$1,500.00
	<b>TOTAL WASTEWATER COLLECTION SYSTEM</b>				<b>\$10,500.00</b>
<b>003 LANDSCAPING AND HARDSCAPING ALONG PERMITTER, RIGHT OF WAYS AND PARK AREAS</b>					
A.	Metal Fence along Property / ROW line	1,000	LF	\$30.00	\$30,000.00
B.	Gate operators (sliding gates to meet fire department codes)	2	EA	\$10,000.00	\$20,000.00
C.	Landscaping on ROW, Perimeters, and BBP Park	1	LS	\$25,000.00	\$25,000.00
D.	Sidewalks on public right of way (~2500 LF included in Offsite Paving Budget)	0	N/A	\$0.00	\$0.00
	<b>LANDSCAPING AND HARDSCAPING</b>				<b>\$75,000.00</b>
<b>004 ENVIRONMENTAL AND GEOTECHNICAL</b>					
A.	SWPPP Reinforced Filter Fabric Fence with Steel Fence Posts and 2-Inch x 4-Inch, 12-Gauge Galvanized Welded Wire Mesh (installation and maintenance) on Sections 2	2,500	LF	\$2.50	\$6,250.00
B.	Stabilized Construction Exit on Sections 2	1	EA	\$1,000.00	\$1,000.00
C.	Inlet/Catch Basin Storm Sewer Protection Barriers on sections 2	3	EA	\$150.00	\$450.00
D.	Street Cleaning	2	EA	\$750.00	\$1,500.00
E.	Storm Water Pollution Prevention Plan Compliance (including SWPPP implementation, performing project site inspections, completing inspection reports, filing notices, posting permits, certificates and notices, installation of new control measures, maintenance of existing control measures, etc.)	1	LS	\$5,000.00	\$5,000.00
F.	Phase I Environmental Site Assessments, Soils Studies, Geotechnical Reports, Construction Materials Testing	1	EACH	\$10,000.00	\$10,000.00
	<b>Total Environmental and Geotechnical</b>				<b>\$24,200.00</b>
<b>005 OFFSITE ROAD IMPROVEMENTS BY DEVELOPER*</b>					
A.	Phase II	1	LS	\$178,162.90	\$126,357.00
	<b>OFFSITE ROAD IMPROVEMENTS</b>				<b>\$126,357.00</b>
	* Please refer to Engineer's Preliminary Construction Estimates for more detail and to map for visual representation of the various phases. These values include soft and hard costs and contingencies.				
	** Acquisition Cost				
<b>006 WATER AND WASTEWATER IMPACT CONNECTION FEES</b>					
A.	Section 2	36	EA	\$1,798.54	\$64,747.44

**EXHIBIT B-2  
OFFSITE IMPROVEMENTS- SECTION 2**

Item #	Item Description	Quantity	Unit	Unit Price	Cost
	<b>TOTAL WASTEWATER COLLECTION SYSTEM</b>				<b>\$64,747.44</b>
<b>007</b>	<b>TIRZ AGREEMENTS AND CONSULTING</b>				
A.	Miscellaneous administrative costs	1	LS	\$5,000.00	\$5,000.00
	<b>TOTAL TIRZ ADMIN COSTS</b>				<b>\$5,000.00</b>
	<b>PRELIMINARY CONSTRUCTION COST ESTIMATE</b>				
001	Offsite Water Distribution System				\$23,200.00
002	Offsite Wastewater Collection System				\$10,500.00
003	Landscaping and Hardscaping				\$75,000.00
004	Environmental and Geotechnical				\$24,200.00
005	Offsite Road Improvements by Developer				\$126,357.00
	<b>Sub-Total Construction</b>				<b>\$259,257.00</b>
	Contingencies (20%)				\$51,851.40
	<b>Total Construction</b>				<b>\$311,108.40</b>
	Engineering & Inspection (12%)				\$37,333.01
	Surveying/Staking i.e. Topo, Control, Construction Staking				\$20,000.00
	Material Testing				\$20,000.00
	Landplanning, Platting and Permitting on Sections 2				\$19,500.00
006	<b>Water and Wastewater Impact Fees</b>				<b>\$64,747.44</b>
007	<b>TIRZ AGREEMENTS</b>				<b>\$5,000.00</b>
	<b>TOTAL PRELIMINARY CONSTRUCTION COST ESTIMATE</b>				<b>\$477,688.85</b>

**EXHIBIT C**

**PROJECT SITE PLAN**

*[follows this cover page]*





- 1. All lots shown on this plat are subject to the restrictions contained in the plat recorded in Public Record No. 001229, H.C.M.R.
- 2. The lots shown on this plat are subject to the restrictions contained in the plat recorded in Public Record No. 001229, H.C.M.R.
- 3. The lots shown on this plat are subject to the restrictions contained in the plat recorded in Public Record No. 001229, H.C.M.R.
- 4. The lots shown on this plat are subject to the restrictions contained in the plat recorded in Public Record No. 001229, H.C.M.R.
- 5. The lots shown on this plat are subject to the restrictions contained in the plat recorded in Public Record No. 001229, H.C.M.R.
- 6. The lots shown on this plat are subject to the restrictions contained in the plat recorded in Public Record No. 001229, H.C.M.R.
- 7. The lots shown on this plat are subject to the restrictions contained in the plat recorded in Public Record No. 001229, H.C.M.R.
- 8. The lots shown on this plat are subject to the restrictions contained in the plat recorded in Public Record No. 001229, H.C.M.R.
- 9. The lots shown on this plat are subject to the restrictions contained in the plat recorded in Public Record No. 001229, H.C.M.R.
- 10. The lots shown on this plat are subject to the restrictions contained in the plat recorded in Public Record No. 001229, H.C.M.R.

NOTES:  
 1. THIS PLAT IS THE RESULT OF A FIELD SURVEY CONDUCTED BY CHAS. W. WILSON, REGISTERED PROFESSIONAL SURVEYOR, H.C.M.R. NO. 001229, H.C.M.R. IN THE YEAR 1987.  
 2. THE LOTS SHOWN ON THIS PLAT ARE SUBJECT TO THE RESTRICTIONS CONTAINED IN THE PLAT RECORDED IN PUBLIC RECORD NO. 001229, H.C.M.R.  
 3. THIS PLAT IS SUBJECT TO THE RESTRICTIONS CONTAINED IN THE PLAT RECORDED IN PUBLIC RECORD NO. 001229, H.C.M.R.



*[Signature]*  
 CHAS. W. WILSON  
 REGISTERED PROFESSIONAL SURVEYOR  
 H.C.M.R. NO. 001229

PLAT OF SURVEY  
**TRACT I - 1.402 ACRES**  
**TRACT II - 1.563 ACRES**

BRUCE LIVE OAK PROPERTIES, A SUBDIVISION, RECORDED IN PUBLIC RECORD NO. 001229, H.C.M.R. IN THE YEAR 1987.  
 A SUBDIVISION RECORDED IN PUBLIC RECORD NO. 001229, H.C.M.R. IN THE YEAR 1987.  
 LOCATED IN HARRIS COUNTY, TEXAS.

**GBI PARTNERS, L.P.**  
**ENGINEERING AND SURVEYING**  
 12000 WESTHOPE BOULEVARD, SUITE 100  
 HOUSTON, TEXAS 77040  
 PHONE: 713-861-1315 FAX: 713-861-1316  
 E-MAIL: GBI@GBI.COM  
 GBI PARTNERS, L.P. IS AN EQUAL OPPORTUNITY EMPLOYER.  
 DATE: 08/27/2013  
 SHEET NO. 1 OF 1

