

City of Houston, Texas, Ordinance No. 2021- 602

AN ORDINANCE APPROVING AND AUTHORIZING AN ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE CITY OF HOUSTON, TEXAS AND A-S 154 WESTHEIMER RANCH, LP FOR THE REDEVELOPMENT, CONSTRUCTION AND OPERATION OF A RETAIL COMMERCIAL DEVELOPMENT; CONTAINING FINDINGS AND OTHER PROVISIONS RELATED TO THE FOREGOING SUBJECT; AND DECLARING AN EMERGENCY.

* * * * *

WHEREAS, pursuant to Article III, Chapter 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code, as amended ("Chapter 380"), the City is authorized to establish a program to promote state or local economic development and to stimulate business and commercial activity in the municipality; and

WHEREAS, the City has authority under Chapter 380 to use public funds for the public purposes of promoting local economic development and stimulating business and commercial activity within the City and surrounding region; and

WHEREAS, by City Ordinance No. 99-674 adopted by the City Council on June 20, 1999, the City established the City of Houston Chapter 380 Program, pursuant to the provisions of Chapter 380, including "Criteria for Chapter 380 Assistance" attached as Exhibit "A" to City Ordinance No. 99-674; and

WHEREAS, Section 2 of City Ordinance No. 99-674 provides that the Director of the City's Planning and Development Department or such Director's designee shall administer the Chapter 380 Program ("Program Administrator"); and

WHEREAS, the Director of the Planning and Development Department has designated the Deputy Director of the Office of the Mayor, Economic Development, as Program Administrator; and

WHEREAS, A-S 154 Westheimer Ranch, LP ("Developer") has submitted an application for assistance pursuant to the Chapter 380 Program; and

WHEREAS, the Developer application provides for the redevelopment, construction and operation of a commercial retail development on a seven (7) acre tract in the City's corporate limits; and

WHEREAS, the Program Administrator has reviewed Developer's application for assistance and has determined that Developer has satisfied the qualifications to be eligible for assistance, and further determined that the agreement attached hereto as

EXHIBIT A ("Agreement") generally meets the criteria for Chapter 380 assistance guidelines set forth in City Ordinance No. 99-674; and

WHEREAS, consistent with Article III, Section 52-a of the Texas Constitution, Chapter 380, and other laws, the Agreement provides that, in consideration for Developer's agreement to redevelop approximately 88,146 square feet of retail and restaurant development including specialty grocery, retail and restaurant uses, along with other site and infrastructure improvements ("Project"), the City will pay to Developer 100% of the incremental sales tax increase generated by the Project for a period of ten (10) years; and

WHEREAS, to ensure that the benefits the City provides under the Agreement are utilized in a manner consistent with Chapter 380 and other laws, the Developer has agreed that its receipt of such benefits shall be conditioned upon its satisfaction of certain conditions, including performance conditions relating to the construction of the Project and job creation; and

WHEREAS, the City Council finds that the Project will accomplish a public purpose and will have a positive economic impact on the City through the timely development and diversification of the economy, elimination of unemployment and underemployment through the creation and retention of new jobs and the retention and growth of the sales tax revenues generated by the Project for the City; and

WHEREAS, the City Council has determined and hereby finds that the Agreement promotes economic development in the City and, as such, meets the requirements of Chapter 380 and the City's established economic development program, and, further, is in the best interests of the City and Developer; **NOW, THEREFORE**,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. Findings. That the facts, findings, and recitals contained in the preamble of this Ordinance are hereby found and declared to be true and correct and are hereby adopted as part of this Ordinance.

Section 2. Approval of the Economic Development Agreement. That the City Council hereby approves and authorizes the contract, agreement, or other undertaking described in the title of this Ordinance, in substantially the form shown in the document attached hereto as **EXHIBIT A**, and incorporated herein by this reference. The Mayor is

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

Section 4. That 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 approval, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this 7th day of July, 2021.

APPROVED this _____ day of _____, 2021.

Mayor of the City of Houston, Texas

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is JUL 13 2021.

Patricia Haniel

City Secretary

DocuSigned by:

Deidra Penny

(Prepared by Legal Department

(KTK:gd July 1, 2021)

(Requested by Andrew F. Icken, Chief Development Officer)

(L. D. File No. 042-2100068-001)

Senior Assistant City Attorney

AYE	NO	
✓		MAYOR TURNER
....	COUNCIL MEMBERS
✓		PECK
✓		JACKSON
✓		KAMIN
✓		EVANS-SHABAZZ
✓		MARTIN
✓		THOMAS
✓		TRAVIS
✓		CISNEROS
✓		GALLEGOS
✓		POLLARD
✓		MARTHA CASTEX-TATUM
✓		KNOX
✓		ABSENT-OUT OF CITY ON PERSONAL BUSINESS ROBINSON
✓		KUBOSH
✓		PLUMMER
✓		ALCORN
CAPTION	ADOPTED	

CAPTION PUBLISHED IN DAILY COURT
 REVIEW
 DATE: **JUL 13 2021**

EXHIBIT A

**Economic Development Agreement
between the City of Houston, Texas and A-S 154 Westheimer Ranch, LP**

ECONOMIC DEVELOPMENT AGREEMENT

THIS ECONOMIC DEVELOPMENT AGREEMENT (the "Agreement") by and between the CITY OF HOUSTON, TEXAS, a Texas home-rule municipal corporation (the "City"), and A-S 154 WESTHEIMER RANCH, L.P., a Texas limited partnership (the "Developer"), is entered into as of the date the City Controller countersigns this Agreement (the "Effective Date").

RECITALS

WHEREAS, the Developer has acquired or has contracted to purchase certain tracts of land totaling approximately seven acres within the corporate limits of the City, as described on the property description marked as **Exhibit A** attached hereto (the "Property"), which contains a partially vacant retail development and on which it intends to redevelop with commercial development consisting of approximately 84,608 square feet of Asian themed retail and restaurant development including an Asian specialty grocery store and other site and infrastructure improvements (the "Project");

WHEREAS, the City recognizes the positive economic impact that the Project will bring to the City through the timely development and diversification of the economy, elimination of unemployment and underemployment through the creation and retention of new jobs, the attraction of new businesses, encouraging tourism and the retention and growth of the sales and use tax revenues generated by the Project for the City;

WHEREAS, the City has established a program in accordance with Article III, Chapter 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code ("Chapter 380") under which the City has the authority to use public funds for the public purposes of promoting local economic development and stimulating business and commercial activity within the City, including the authority to enter into this Agreement;

WHEREAS, consistent with Article III, Section 52-a of the Texas Constitution, Chapter 380, and other laws, the City agrees to enter into this Agreement with the Developer to advance the public purposes of developing and diversifying the economy of the state, eliminating unemployment or underemployment in the state, and developing or expanding transportation or commerce in the state;

WHEREAS, the City acknowledges that Developer's construction and development of the Project will require Developer to incur costs particular to the Project site that would not be required for other sites (the "Extraordinary Costs") and, in accordance with the terms of this Agreement, will use the benefits provided herein to reimburse Developer for a portion of the Extraordinary Costs during the term of the Agreement;

WHEREAS, in consideration of the design, timely construction, and development of the Project, which will bring additional ad valorem tax revenues and sales and use tax revenues to the City and additional jobs and provision of other community benefits (as set forth herein) resulting from the construction of the Project, the City desires to enter

into this Agreement pursuant to Chapter 380 and other applicable laws as an economic incentive for the Developer to develop, finance and construct the Project;

WHEREAS, the City has determined and hereby finds that this Agreement promotes economic development in the City and, as such, meets the requirements under Chapter 380 and the City's established economic development program, and, further, is in the best interests of the City and the Developer;

WHEREAS, to ensure that the benefits the City provides under this Agreement are utilized in a manner consistent with Chapter 380 and other law, the Developer has agreed to that its receipt of such benefits shall be conditioned upon its satisfaction of certain conditions enumerated herein, including performance conditions relating to the investment of private funds for the Project, job creation and Project operations;

WHEREAS, to induce the Developer to develop and finance the construction of the Project for the public purposes of developing and diversifying the economy of the state, to create jobs, and to operate the Project in accordance with the performance measures set forth herein, which will generate Sales Tax Revenues (as defined herein) and increased ad valorem property tax revenues for the City, the City agrees to grant to the Developer the Reimbursement Amount, but not more than the Maximum Reimbursement Amount (as defined herein);

WHEREAS, consistent with Chapter 380, this Agreement advances the public purposes of developing and diversifying the economy of the state, eliminating unemployment or underemployment in the state, and developing or expanding transportation or commerce in the state; and

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

ARTICLE I GENERAL TERMS

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

B. Definitions and Terms. The terms "Agreement," "Chapter 380," "City," "Developer," "Effective Date," "Project," and "Property," shall have the meanings given to such terms in the Recitals, and the following terms have the following meanings:

"Base Tax" shall mean the amount of sales and use tax received by the City during calendar year 2021 under Chapter 321, Texas Tax Code, as amended, derived from the Project.

"City Commitment" shall have the meaning ascribed to it in Article V, Section C of this Agreement.

"City Representative" shall mean the Chief Development Officer of the City, or any successor designee.

"Extraordinary Project Costs" shall mean certain costs of development specific to the Project, as described in detail on **Exhibit C** hereto which are in addition to the customary project costs and shall include: (i) Demolition of approximately 13,000 sq. ft. of existing building; (ii) demolition and reconstruction of approximately 5,000 sq. ft. building; (iii) construction of an off-street loading dock for improved public safety; (iv) construction of improved onsite stormwater detention facilities/improvements; (v) internal & external structural improvements relating to redesign of tenant spaces; and (vi) increased onsite paving for parking, all as further set forth herein.

"Force Majeure" shall have the meaning ascribed to it in Article VI, Section F of this Agreement.

"Incremental Increase" shall mean, for each calendar year after the Reimbursement Date, the amount of the Sales Tax Revenues derived from the Project and received by the City under Chapter 321, Texas Tax Code, as amended, above the Base Tax.

"Maximum Reimbursement Amount" shall mean an amount payable only from incremental Sales Tax Revenues that is equal to the lesser of (i) the actual Extraordinary Project Costs, or (ii) \$1,750,000, subject to reductions pursuant to Article VI, Section B of this Agreement.

"Parties" or "Party" shall mean the City and the Developer, the parties to this Agreement.

"Reimbursement Amount" shall mean 100% of the Incremental Increase in the amount of Sales Tax Revenues, subject to reductions set forth in Article VI, Sections B & C of this Agreement, which amount shall not exceed the Maximum Reimbursement Amount.

"Reimbursement Date" shall mean March 31st of each year following the Reimbursement Effective Date.

"Reimbursement Effective Date" shall mean March 31st of the year following the occurrence of: (i) the City having issued a certificate of completion for the Project as a whole; (ii) Developer having completed all tenant buildout, as evidenced by the issuance of a final certificate of occupancy, for at least seventy-five percent (75%) of the total tenant space within the Project (as shown on the approved site plan attached hereto as **Exhibit B**), the "Minimum Initial Occupancy"; and (iii) all tenants constituting the Minimum Initial Occupancy shall be open to the public, fully stocked and staffed for operation.

“Reimbursement Year” shall mean each 12 month period during the Term, beginning on the Reimbursement Effective Date and ending on the date that is twelve months thereafter.

“Sales Tax Revenue(s)” shall mean the amount of sales and use tax revenues generated by the Project and collected by or for the City and remitted to the City by the State Comptroller, pursuant to Chapter 321 of the Texas Tax Code, as amended, during the Term of this Agreement.

“State Comptroller” shall mean the Comptroller of Public Accounts for the State of Texas, or such other agency responsible for collecting sales and use taxes within the State of Texas and remitting them to the City.

“Term” shall mean the term of this Agreement, which shall commence on the Effective Date and shall continue until the earlier of: (i) the payment to the Developer of the Maximum Reimbursement Amount, or (ii) ten (10) years from the Reimbursement Effective Date.

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 THE PROJECT AND CONSTRUCTION

A. The Project. The Project is a retail shopping center consisting of approximately 84,608 square feet of Asian themed retail shop, restaurants and an Asian specialty Grocery Store, as further described in the detailed site plan and description of improvements attached hereto as **Exhibit B** (the “Project Site Plan”). The Project Site Plan may be modified at any time by the Developer, provided that the Developer certifies to the City that the Project, as modified shall (i) maintain its character as a retail development and (ii) meet the commitments set forth in Article IV, Sections A and B hereof. The Developer agrees to abide by 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. Construction Schedule. Developer will use commercially reasonable efforts to complete construction of the Project and obtain the certificate of completion on or before October 31, 2023 and to achieve final certificates of occupancy for tenants meeting the Minimum Initial Occupancy requirement of 75% on or before July 31, 2024.

ARTICLE III REPRESENTATIONS

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

The City is a duly created and existing municipal corporation and home rule municipality of the State of Texas 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 the Developer. The Developer hereby represents to the City that as of the date hereof:

The 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.

The 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 the 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 the Developer under any agreement or instrument to which the Developer is a party or by which the 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 the 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.

ARTICLE IV DEVELOPER COMMITMENTS

In consideration of the City's agreeing to pay the Developer the Reimbursement Amount in accordance with the terms, provisions and conditions of this Agreement, the Developer agrees to fulfill the following conditions in order to receive the Reimbursement Amount:

A. Project Funding. Within 24 months after the Effective Date of this Agreement, the Developer shall certify to the City that private funds and sources totaling approximately Nineteen Million, Forty Thousand, Five Hundred Ninety-Six Dollars (\$19,040,596.00) are available or have been expended towards the Project Costs. ("Project Cost" includes all property acquisition and all development related expenses necessary to reach full occupancy) Failure of the Developer to timely provide such certification to the City shall result in a failure to start receiving reimbursements

B. Construction of Project. The Developer intends and has plans to construct the Project as expeditiously as possible, and expects that the Project will be open to customers and generating sales tax revenues by October 2023. Failure of the Developer to open the Project for business by July 2024 will be an Event of Default under this Agreement. ("Open the Project for Business" shall be defined as receiving the first Certificate of Occupancy")

C. Extraordinary Cost Certification. Once the Developer has obtained a certificate of completion of the Project, but in no event less than ninety (90) days prior to the Reimbursement Effective Date, the Developer will provide to the City Representative for review and approval a certification in the form attached hereto as **EXHIBIT D**, certifying in detail as to the actual Extraordinary Project Costs, including supporting payment documentation incurred or reimbursed by the Developer (the "Cost Certification"). The City Representative shall approve and countersign the Cost Certification if he or she determines that the costs were actually incurred for the Improvements set forth on **EXHIBIT C**, as may be modified from time to time, and if the costs are commercially reasonable (the "City-Approved Cost Certification"). If the City Representative is unable to approve the Cost Certification, he or she shall so advise the Developer in writing, identifying the items of concern. The Developer shall have an opportunity to respond, in writing, and submit a modified Cost Certification to the City for review and approval. Upon the City Representative's request, the Developer shall promptly provide invoices and other supporting documentation for the City's review and approval of the Cost Certification. The amount of the Extraordinary Project Costs set forth in the City-Approved Cost Certification shall be used to validate the Reimbursement Amount.

D. Job Creation. The Developer agrees that jobs will be created by the development of the Project. The Parties acknowledge that the Developer may not directly provide all the jobs created by the Project, and that jobs will be created and retained by tenants and others occupying or managing the Project. As used herein, the term "jobs" shall mean all full-time positions in management, retail, restaurant and service which provide a regular work schedule of at least 35 hours per week; provided that two positions

providing part-time work schedules equal to 35 hours shall be equivalent to one job. In order to assure the City that the Project will produce sufficient job creation, the Developer agrees to make the following certifications on an annual basis (the "Job Creation Requirement"): (i) at least one hundred Fifty-four (154) jobs will have been created and retained on the Reimbursement Effective Date, (ii) at least one hundred Eighty (180) jobs will have been created and retained on the first anniversary of the Reimbursement Effective Date, (iii) at least two hundred thirty-four (234) jobs will have been created and retained on the second anniversary of the Reimbursement Effective Date and every Reimbursement Date thereafter during the term of this Agreement. In order to assure the City that the Project will produce sufficient job creation, the Developer agrees that it is a condition to payment of the Reimbursement Amount that the Developer submit to the City annual certifications, in accordance with this Section, a Jobs Creation Certification substantially in the form attached hereto as **EXHIBIT E** (the "Job Creation Certification"). Such certification shall include such documentation as reasonably necessary to satisfy the Job Creation Certification, which documentation shall include a sworn statement from a corporate officer of the Developer, or the corporate officer's designee, attesting to the number of jobs created or retained and indicating the source of the information Developer used to determine the number of jobs created by the Project and a Tenant listing of the number of jobs created and maintained. Payment of the Reimbursement Amount is subject to the Developer's timely certification as described in this Section. Developer shall use commercially reasonable efforts to include in all tenant leases a provision requiring the tenants to provide evidence to Developer of the tenant's job numbers as of February 1 of that calendar year. In the event a declared emergency resulting from an epidemic/pandemic results in closures or restrictions ordered by the State or Federal government materially impairs the ability of Developer or the Tenants of the Project to operate their businesses, the Job Creation Requirement shall be suspended during the period that the ordered restrictions remain in place.

E. Hiring Program Participation. The Developer will use commercially reasonable efforts to encourage its tenants to use good faith efforts to hire qualified residents of the Houston-Westchase area and surrounding zip codes to work at the Project with the goal of having at least thirty percent (30%) of the Project tenant's personnel at this location be residents of the Houston-Westchase area and the surrounding zip codes. In conjunction with the initial hiring of personnel to operate the Project, the Developer will provide Tenant with information regarding local Job Sourcing Opportunities to offer available positions to qualified local Houston Area residents over non-residents who are similarly qualified as determined solely by the Tenant in its discretion and consistent with its business needs and its commitment to equal opportunity, and subject to all applicable local, state and federal employment laws.

To ensure Developer meets the Project's goal of hiring local residents and to deliver the anticipated community benefits related to job creation, Developer agrees to coordinate with the City's Economic Development Office and include the following information within the tenant welcome packets: (i) Job Sourcing Opportunities; (ii) job posting opportunity information such as providing a link to job postings and hiring information to City Council members for placement on websites and local job boards; (iii) include information regarding contacts for programs including the City's Re-entry Program

and Turnaround Houston; (iv) information on First Source Hiring to use good faith efforts to employ local Houston-Westchase residents for entry level positions within the Project. The tenants failure to hire or employ any certain number of employees within Houston, Houston-Westchase Area or surrounding zip codes shall not constitute an Event of Default hereunder or otherwise affect the City's obligation to pay the Developer the full amount of the Reimbursement Amount as provided herein.

F. Operational Condition. Beginning on the Reimbursement Effective Date, the Developer shall continuously operate (or cause to be operated) the Project on the Property during the Term of this Agreement, subject only to (i) events of Force Majeure, (ii) reasonable periods of closing actually required for repair or restoration following casualty or condemnation, and (iii) temporary closings (not to exceed 270 days, and not more frequently than once each five (5) years) for repair, renovations and/or alterations of the Property.

G. Competitive Bidding. If the Company does not comply with a competitive bidding requirement of Texas law applicable to an Improvement conveyed to a public entity, the City shall not pay the cost of that Improvement.

H. Performance Bonds. The 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 for Public Improvements with that contractor, conditioned on the contractor's full and timely performance under the construction contract. The 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.

I. Utilization of Local Contractors and Suppliers. The Developer agrees to exercise commercially reasonable efforts to utilize local contractors and suppliers in the construction of the Project A contractor or supplier shall be considered as local if it has maintained an office within the City for at least one year. Developer will utilize best efforts to encourage all contractors and subcontractors working on the Project to: (i) provide a list of all available construction jobs to Houston City Council members for inclusion on websites and local job boards, (ii) to hire workers for the West Houston neighborhood, (iii) to partner with Houston Builder's Institute (HBI) to hire new graduates for jobs on the Project, and (iv) require each supervisor to have at least 30 hours of OSHA training and each worker to have at least 10 hours of OSHA training. Developer will provide to the City Representative evidence from the prime contractor of the required job postings, evidence of local applicants and interviews and evidence of the prime contractor's coordination with HBI and of each HBI graduate interview. Developer will cause the prime contractor to provide written evidence of all OSHA training for all supervisors and workers employed directly by the prime contractor or its subcontractors.

J. Business Opportunity. The Developer is encouraged to review the City's Minority and Women Business Enterprise ("MWBE") program set forth in Chapter 15, Article V of the City of Houston Code of Ordinances and the requirements for good faith efforts on file with the City Office of Business Opportunity ("OBO"). The Developer agrees to make good faith efforts to award the maximum number of contracts, subcontracts, or supply agreements to entities that are certified by the City as MWBEs. The Developer's failure to award any certain number of contracts, subcontracts, or supply agreements to entities that are certified by the City as MWBEs shall not constitute an Event of Default hereunder or otherwise affect the City's obligation to pay the Developer the full amount of the Reimbursement Amount as provided herein.

K. Maintenance of Records. The Developer shall be responsible for maintaining records of all related costs incurred and payments made for the Project and the Public Improvements and records evidencing compliance with all of the Developer commitments required by this Article IV and shall make such records available to the City for examination at the City's reasonable request. The City shall have the right to review and audit such records upon five (5) days prior written notice to the Developer.

ARTICLE V REIMBURSEMENT

A. Calculation of Reimbursement Amount. For each calendar year during the Term of this Agreement, the City shall determine the amount of the Sales Tax Revenues received by the City from the State Comptroller in cooperation with the Developer and the State Comptroller. The City and the Developer hereby designate this Agreement as a Revenue Sharing Agreement, and therefore, pursuant to Section 321.3022, Texas Tax Code, as amended ("Section 321.3022"), the State Comptroller is required to provide to the City, upon request of the City, information relating to the amount of sales and use tax paid to the City generated by the Project. In the event that the State Comptroller determines that the authority granted to the City pursuant to Section 321.3022 is insufficient for the City to receive the necessary information to calculate and determine the amount of the Sales Tax Revenues received by the City, the City may request that the Developer provide an executed release form, in substantially the form attached hereto as **Exhibit F**, from each tenant of the Project. The City will calculate the Sales Tax Revenues, less the Base Tax, which will equal the Incremental Increase. The Incremental Increase, subject to the reductions set forth in Article VI, Sections B&C, shall be the Reimbursement Amount for that year.

B. Confidential Information. Unless determined otherwise by the Texas Attorney General in writing, any information received relating to the Sales Tax Revenues shall be considered confidential proprietary financial information not subject to immediate release to the public. The City shall seek a written opinion from the Texas Attorney General, raising any applicable exception to release, prior to any release to a third party under the Texas Public Information Act. All supporting documentation the Developer provides to the City will be considered Confidential, including without limitation, information provided to Developer by tenants to support job creation, and included as documentation for certification.

C. Payment of Reimbursement Amounts. Beginning on the Reimbursement Effective Date and continuing through each calendar year throughout the Term of this Agreement and so long as the Developer is in compliance with its commitments set forth of Article IV of this Agreement, the City shall pay the Reimbursement Amount due to the Developer within 45 days following receipt of the Sales Tax Revenues for the previous calendar year from the State Comptroller, pursuant to this Agreement and subject to the adjustments set forth in Article VI (the "City Commitment"). The City Commitment is an unconditional obligation of payment by the City (but solely from the Sales Tax Revenues generated by the Project), if the Project generates Sales Tax Revenues. Except as otherwise expressly set forth in this Agreement, such payments are not subject to any reduction, whether offset or otherwise. The City shall never be obligated to make any payment to the Developer from any funds other than the Sales Tax Revenues generated by the Project.

ARTICLE VI DEFAULT AND REMEDY

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

B. Job Creation Default. If the Developer (1) does not satisfy the Job Creation Certification, or (2) the City comes into possession of evidence that directly contradicts the Job Creation Certification provided by Developer, for any year during the Term of this Agreement (commencing on the Reimbursement Effective Date) (a "Job Creation Default"), the City shall reduce the Reimbursement Amount for that Reimbursement Year by Seven Thousand, Four Hundred Seventy-Five and no/100 Dollars (\$7475.00) (the "Job Shortfall Reduction") for each job less than the required Job Creation Requirement that Developer has caused to be created and maintained for the applicable Reimbursement Year. Beginning on the third Reimbursement Date, if any one or more Job Creation Default occurs for that then-current Reimbursement Year and the previous Reimbursement Year, then the Job Shortfall Reduction shall also reduce the Maximum Reimbursement Amount by an equal amount for the then-current year. A reduction in the Maximum Reimbursement Amount as a result of the Developer's Job Creation Default(s) in a calendar year is irrevocable and may not be recouped by the Developer at any time, regardless of whether the Developer satisfies the Jobs Creation Certification in a subsequent calendar year.

C. Hiring/Training Default. The following additional reductions in the Reimbursements shall each apply in addition to the reduction provided for in Subsection B. above. All such reductions be cumulative.

1. If, during any Reimbursement Year, the Developer fails to comply with the requirements of Article IV, Section E (i),(ii), or (iv), the Reimbursement Amount for that Reimbursement Year shall be reduced by five percent (5%).

2. If, during any Reimbursement Year, the Developer fails to comply with the requirements of Article IV, Section E (iii), the Reimbursement Amount for that Reimbursement Year shall be reduced by five percent (5%) in addition to any Job Shortfall Reduction provided in Section B above.
3. If, during initial Redevelopment of the Project, the Developer fails to cause the prime contractor to comply with the OSHA training requirements of Article IV, Section I, the Reimbursement Amount for the first Reimbursement Year shall be reduced by five percent (5%).

D. General Events of Default. A party shall be deemed in default (an "Event of Default") under this Agreement (which shall be deemed a breach hereunder), if following 30 days notice and opportunity to cure such breach (or such longer period as reasonably required to cure, so long as such cure commences within 30 days and the defaulting party is diligently pursuing such cure, each as determined by the non-defaulting party in the non-defaulting party's sole reasonable discretion). It shall be a breach of this Agreement for either party to fail to materially perform, observe or comply with any of the commitments, covenants, agreements or obligations set forth in Article IV of this Agreement or if any of the party's representations contained in Article III of this Agreement are false.

E. Remedies. The Developer shall have all rights and remedies to which it is entitled under this Agreement or otherwise at law or equity for an Event of Default by the City. Notwithstanding anything in this Agreement 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. The City, as its sole and exclusive remedy, except as expressly provided otherwise herein, for an Event of Default by the Developer, may terminate this Agreement by written notice to the Developer. The City's termination of this Agreement for an Event of Default by the Developer will terminate the City's obligation to make any payment under this Agreement.

F. 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 VII GENERAL PROVISIONS

A. Time of the essence. Time is of the essence 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 the Developer's compliance with all applicable laws, expeditiously processing permits and approvals to facilitate the Developer's timely procurement of all entitlements required for the Project and the Public Improvements.

B. Notices. Any notice sent under this Agreement (except as otherwise expressly required) shall be written and mailed 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 the Developer: A-S 154 WESTHEIMER RANCH, L.P.

c/o NewQuest Properties
8827 W. Sam Houston Pkwy. N., Suite 200
Houston, TX 77040
Attn: Steve Alvis

With a copy to:

A-S 154 WESTHEIMER RANCH, L.P.

c/o NewQuest Properties
8827 W. Sam Houston Pkwy. N., Suite 200
Houston, TX 77040
Attn: Legal Department

If to the City:

Chief Development Officer
901 Bagby Street, 4th Floor
City of Houston, Texas
P.O. Box 1562
Houston, Texas 77002

With a copy to:

City Attorney
City of Houston, Texas
900 Bagby, 4th 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 days from the date such notice is mailed or sent by rapid transmission.

Either 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 (overnight mail via national courier service) shall be deemed to be given when receipt of such transmission is acknowledged by confirmed delivery, 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 the Developer or the City, as the case may be.

C. 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 the Developer and the City. No course of dealing on the part of the Developer or the City nor any failure or delay by the Developer 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.

D. Invalidity. 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.

E. Successors and assigns. Neither Party shall have the right to assign its rights under this Agreement or any interest herein, without the prior written consent of the other Party, except that the Developer may assign its rights and responsibilities hereunder to (i) a lending institution of all of the 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 the Developer assigns, subleases, or otherwise conveys its interest in the Property, provided that any assignee under (ii) or (iii) agrees in writing to assume the Developer's obligations under this Agreement. The City shall not unreasonably withhold its written consent. The City's Director of the Finance Department, or the Director's designee, may consent to a qualifying assignment under this Section on behalf of the City.

F. Exhibits, 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 between 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.

G. 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.

H. Entire agreement. This Agreement represents the final agreement between 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 between the parties.

I. 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.

J. 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.

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

L. Conflicts with Ordinances. The City and the Developer 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.

[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 and the City, effective as of the Effective Date defined herein.

<p>CITY:</p> <p>CITY OF HOUSTON, a Texas home-rule municipal corporation</p> <p>_____</p> <p>Mayor</p> <p>Date: _____</p> <p>ATTEST/SEAL:</p> <p>_____</p> <p>City Secretary</p> <p>Date: _____</p> <p>COUNTERSIGNED:</p> <p>_____</p> <p>City Controller</p> <p>Date: _____</p> <p>APPROVED AS TO FORM:</p> <p>_____</p> <p>Assistant City Attorney</p>	<p>DEVELOPER:</p> <p>A-S 154 WESTHEIMER RANCH, L.P., a Texas limited partnership</p> <p>By: A-S 154, L.C., a Texas limited liability company, it's general partner</p> <p>By: _____</p> <p>DocuSigned by: <i>Alvin Alvin</i> Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>
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EXHIBIT A
DESCRIPTION OF PROPERTY

February 9, 2018

*7,000 acres of land in the W.M. Hardin Survey, Abstract No. 24,
City of Houston, Harris County, Texas*

A FIELD NOTE DESCRIPTION of a 7,000 acre (304,919 square feet) tract of land in the W.M. Hardin Survey, Abstract No. 24, City of Houston, Harris County, Texas; said 7,000 acre tract being out of Unrestricted Reserve "A", Block I, Shadowbriar Section Three, according to the map or plat recorded in Volume 299, Page 90, of the Harris County Map Records and being conveyed to Platinum Valley Company, LTD., as recorded in Harris County Clerk's File No. N427923; said tract being more particularly described by metes-and-bounds as follows with the bearings being based on Texas State Plane Coordinate System, South Central Zone (NAD83) per GPS Observations using National Geodetic Survey Continuously Operating Reference Stations:

BEGINNING at a cut 'x' found in the north right-of-way line of Westheimer Road (120 feet wide) for the southwest corner of a called 2.422 acre tract of land conveyed to Tenax Management, LP, as recorded in Harris County Clerk's File No. W045235 and for the southeast corner of this tract; from which a 5/8-inch iron rod with cap stamped "BOWES" found bears North 87° 26' 57" East - 259.95 feet;

THENCE, South 87° 26' 57" West - 611.77 feet with the north right-of-way line of said Westheimer Road and with the south line of said Unrestricted Reserve "A" to a 5/8-inch iron rod with cap stamped "LEKKA" found for the southeast corner of a called 4.9493 acre tract of land conveyed to MHK Realty of Texas, LLC, as recorded in Harris County Clerk's File No. 20090447749 and for the southwest corner of this tract;

THENCE, North 02° 32' 02" West - 534.40 feet with the east line of said 4.9493 acre tract to a 5/8-inch iron rod found in the south right-of-way line of Overbrook Drive (60 feet wide), according to the map or plat recorded in Volume 299, Page 90, of the Harris County Map Records, for the northeast corner of said 4.9493 acre tract and for the northwest corner of this tract;

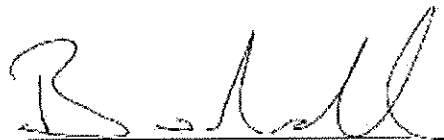
THENCE, in an easterly direction with the south right-of-way line of said Overbrook Drive, with the north line of said Unrestricted Reserve "A" and with a curve to the left having a radius of 3,030.00 feet, a central angle of 10° 34' 08", a length of 558.91 feet, and a chord bearing South 87° 14' 58" East - 558.12 feet to a 5/8-inch iron rod found for a point-of-tangency;

THENCE, North 87° 27' 58" East - 56.02 feet with the south right-of-way line of said Overbrook Drive and with the north line of said Unrestricted Reserve "A" to a cut 'x' set for the northwest corner of a called 0.4463 acre tract of land conveyed to 2005 Business Corporation, as recorded in Harris County Clerk's File No. 20130003616 and for the northeast corner of this tract;

THENCE, South 02° 32' 02" East with the west line of said 0.4463 acre tract, at a distance of 76.39 feet pass a bent 1/2-inch iron rod found for the southwest corner of said 0.4463 acre tract and for the northwest corner of said 2.422 acre tract and continuing with the west line of said 2.422 acre tract for a total distance of 482.82 feet to the POINT OF BEGINNING and containing 7,000 acres (304,919 square feet) of land.

Note: This metes-and-bounds description was compiled in conjunction with a survey performed on even date.

COMPILED BY:
TEXAS ENGINEERING AND MAPPING CO.
Civil Engineers - Land Surveyors
Stafford, Texas
Firm Registration No. 10119000
Job No. 356-227
W0356-227 TRACT.docx



Brian Nesvadba
Registered Professional Land Surveyor
State of Texas No. 5776

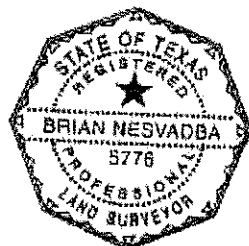


EXHIBIT B
SITE PLAN OF PROJECT

EXHIBIT C
EXTRAORDINARY DEVELOPMENT COSTS



Exhibit C - Extraordinary Development Cost

- Demolition of approximately 13,000 sq.ft of existing commercial space
+\$170,000
- Demolition of existing building and construction of approximately 5,000sqft
+\$700,000
- Off-street truck loading dock and related items
+\$160,000
- Drainage Improvements
+\$485,000
- Internal & External Structural Improvements relating to redesign of tenant spaces.
+\$300,000
- Increasing Onsite Paving for Parking
+\$175,000

**EXHIBIT D
FORM OF COST CERTIFICATION**

Chief Development Officer
City of Houston, Texas
P.O. Box 1562
Houston, Texas 77002

Re: ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE CITY OF HOUSTON,
TEXAS AND COMPANY.; COST CERTIFICATION

This Cost Certification is being delivered by Company Complete Legal Name ("Legal Name") in connection with that certain Economic Development Agreement between the City of Houston, Texas (the "City"), and Company, as of _____, 20__ (the "Agreement"). All terms used herein have the meanings ascribed to them in the Agreement unless otherwise defined herein.

1. The undersigned authorized officer of Company hereby certifies to the City that the Reimbursement Date occurred on _____, 20__. Attached hereto as Exhibit A is a true and complete copy of the Final Certificate of Completion or Letter of Acceptance and Certificate of Occupancy if applicable from the Public Works Director for the Company and documentation.

2. The undersigned authorized officer of Company hereby certifies to the City that Company has paid or reimbursed its builder/contractor for Company Extraordinary Costs in the amount of \$ _____ and that attached hereto as Exhibit B is an itemization of these Extraordinary Costs.

The undersigned hereby certifies that I am a duly authorized representative of Company and am duly authorized to execute this Company Cost Certification.

ATTEST: COMPANY LEGAL NAME

BY:

NAME - SIGNATURE

NAME - PRINTED

TITLE: _____

DATE: _____

STATE OF _____

COUNTY OF _____

EXHIBIT E

FORM OF JOB CERTIFICATION

I, _____, am the Chief Financial Officer of _____, a _____ company authorized to transact business in the state of Texas. _____ and the City of Houston entered into a Chapter 380 Agreement dated effective _____ (the "Agreement"). This affidavit functions as fulfilling _____ 20__ obligations regarding Section __ and __ of the Agreement, and I am authorized by the Company to make the associated representation. I hereby offer the following representations:

- A. That, as of _____, and as required by Article XXX Section XXX of the Agreement, the Company is in compliance with all provisions of this Agreement for the prior year.
- B. That, as of _____, and as required by XXX of the Agreement, employee head count is _____, broken down by company as follows:

Company	Officer	Title	Count
Tenant 1	Authorizing Personnel 1	Authorizing Personnel Title 1	Job Count 1
Tenant 2	Authorizing Personnel 2	Authorizing Personnel Title 2	Job Count 2
Tenant 3	Authorizing Personnel 3	Authorizing Personnel Title 3	Job Count 3
Tenant 4	Authorizing Personnel 4	Authorizing Personnel Title 4	Job Count 4
TOTAL			Job Count Total

The above statements are true and accurate.

 Maker of Affidavit, Job Title
 Company Name

Notary Public

Subscribed and sworn to before me this ____ day of _____, 20__

Signature: _____
 Name of Notary: _____
 My Commission Expires on: _____

EXHIBIT F

SAMPLE AGREEMENT TO RELEASE SALES AND USE TAX INFORMATION

This Agreement is entered into between the City of Houston, Texas ("City"), and _____ (business name) ("Taxpayer") for the purposes indicated herein.

I, _____, _____ (title), the duly authorized agent of _____ (business name), a vendor doing business at _____ (name and address of facility), do hereby stipulate and agree as follows:

I hereby authorize the Texas Comptroller's Office to release and disclose any and all Sales and Use tax information relating to the operation of Taxpayer's business location to the City. I understand and agree that this release will be made by the Comptroller's Office to the City on an ongoing monthly basis beginning on the date this Agreement is executed. This Agreement waives any and all rights with respect to the parties regarding the confidentiality of tax information under Sections 111.006 and 151.027, Texas Tax Code, or other state law.

This Agreement is entered into in or with regard to property located in Houston, Harris County, Texas, and Texas law will apply to its interpretation and enforcement.

SIGNED AND AGREED TO on the _____ day of _____, 20__.

Name
Title
On behalf of the City

Name
Title
On behalf of the Taxpayer

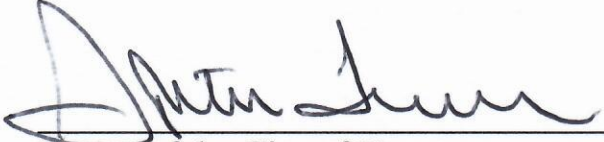
Texas Taxpayer Identification No.

MAYOR'S REQUEST FOR EMERGENCY PASSAGE

To the Honorable City Council of the City of Houston:

In accordance with the provisions of Article VII, Section 7 of the Charter of the City of Houston, I submit and introduce to you the ordinances set out in the attached agenda for the meeting of the City Council of the City of Houston on the 7th day of JULY 2021, with the request that all such ordinances, except for those ordinances making a grant of any franchise or special privilege, or requiring multiple readings under state law or the City Charter, be passed finally on the date of their introduction. Other than those items excepted, there exists a public emergency requiring final passage on the date of introduction, and I accordingly request that you pass the same if they meet with your approval.

DATE: JULY 7, 2021



Mayor of the City of Houston