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2013-0214

ECONOMIC DEVELOPMENT AGREEMENT

This Economic Development Agreement ("Agreement") is made and entered into by and between the **CITY OF HOUSTON, TEXAS**, a Texas home-rule municipal corporation ("City"), the **SOUTHWEST HOUSTON REDEVELOPMENT AUTHORITY** on behalf of Tax Increment Reinvestment Zone Number Twenty ("Authority"), and **HOUSTON BAPTIST UNIVERSITY DBA BEECHNUT STREET, INC.**, a Texas Corporation ("Developer"), effective as of the date the City Controller countersigns this Agreement ("Effective Date").

RECITALS

WHEREAS, Developer owns certain tracts of land totaling approximately 30 acres located within the corporate limits of the City at U.S. Highway 59 and Fondren Road, as more particularly described in **Exhibit A** attached hereto ("Property"), on which Developer intends to construct improvements adjacent to the Houston Baptist University ("HBU") campus, including construction of a hotel and conference center, a 5,000-seat performance venue and arena, ground floor retail with office space, the extension of incomplete and unfinished roads and streets, construction of a detention pond, and landscaping improvements to the gateway entrance at U.S. Highway 59 and Fondren Road ("Project"); and

WHEREAS, certain public improvements may be developed to serve the Property, including detention and drainage improvements, road and street improvements, public recreational facilities, and traffic and mobility improvements as more particularly described in **Exhibit B** attached hereto ("Public Improvements"); and

WHEREAS, Developer intends to add approximately \$160,000,000 in ad valorem tax value to the Property by the Reimbursement Date; and

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, and the retention and growth of the ad valorem and sales and use tax revenues generated by the Project for the City; and

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") pursuant to which the City has authority to enter into this Agreement, and has authority to use public funds for the public purposes of promoting local economic development and stimulating business and commercial activity within the City; and

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 Developer and the Authority 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; and

WHEREAS, in consideration of the design, timely construction, and development of the Project, which will bring additional ad valorem tax revenues, sales and use tax revenues, and hotel tax revenues to the City and additional jobs 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 Developer to develop, finance and construct the Project; and

WHEREAS, the City has determined and hereby finds that this 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; and

WHEREAS, to ensure that the benefits the City provides under this Agreement are utilized in a manner consistent with Chapter 380 and other laws, Developer has agreed that its receipt of such benefits shall be conditioned upon its satisfaction of certain conditions enumerated herein, including performance conditions relating to the construction of the Project and job creation; 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, to create jobs, and to operate the Project in accordance with the performance measures set forth herein, which will generate sales and use tax revenues, hotel tax revenues and increased ad valorem property tax revenues for the City, the City agrees to grant to Developer the Reimbursement Amount, but not to exceed the Maximum Reimbursement Amount (as defined below); and

NOW, THEREFORE, in consideration of the promises and mutual agreements set forth herein, the City, the Authority, 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," "Chapter 380," "City," "Authority," "HBU," "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:

"Authority Grant Revenue Fund" means the fund, established by the Authority into which the Reimbursement Amount from the City will be deposited.

"Base Property Tax" means the amount of ad valorem taxes levied and collected by the City that are derived from the Property, based on the total taxable value of the Property as of January 1, 2013.

"City Commitment" has the meaning ascribed to it in Article VI, Section B of this Agreement.

"City Representative" means the Mayor of the City or the Mayor's designee.

"Final Plans and Specifications" has the meaning ascribed to it in Article II, Section D.

"Force Majeure" has the meaning ascribed to it in Article VII, Section F of this Agreement.

"Incremental Increase" means, for each calendar year after the Reimbursement Date, the amount of ad valorem tax revenues collected by the City derived from the Project above the Base Property Tax.

"Job Creation Certification" has the meaning ascribed to it Article IV, Section B.

"Job Creation Default" has the meaning ascribed to it in Article VII, Section B.

"Maximum Reimbursement Amount" means an amount payable only from Tax Revenues that is equal to the lesser of (i) the actual Public Improvements Costs, or (ii) \$4,430,000, and that may be reduced pursuant to Article VI, Section C of this Agreement.

"Party" or "Parties" means the City, the Authority, and Developer, the parties to this Agreement.

"Project Site Plan" means the site plan 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 Cost" means all past and future costs of acquisition, design, engineering, development and construction of the Public Improvements, including (i) the acquisition cost of any land or rights of way on which any part of the Public Improvements will be constructed; (ii) all costs of design, engineering, planning, materials, labor, construction, testing and inspection and other services arising in connection with the design and construction of the Public Improvements; (iii) all payments arising under any contracts entered into for the design or construction of the Public Improvements; and (iv) all costs incurred in connection with obtaining governmental approvals, certificates and permits required in connection with the construction of the Public Improvements.

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

"Reimbursement Amount" means the amount of Tax Revenues, not to exceed the Maximum Reimbursement Amount.

"Reimbursement Date" means the date on which Developer receives from the City all certificates of completion/occupancy and all Public Improvements have been fully completed, conveyed to and accepted by the City.

"Tax Revenues" means an amount equal to seventy-five percent (75%) of the Incremental Increase in the City's ad valorem tax revenues collected and generated by the Project above the Base Property Tax during each year of the Term of the Agreement.

"Term" means the duration of this Agreement, commencing on the Effective Date and continuing until the earlier of: (i) the payment to Developer of the Maximum Reimbursement Amount; or (ii) eight (8) years from the Reimbursement 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 THE PUBLIC IMPROVEMENTS

A. The Project. The Project is a mixed use retail and commercial development to be constructed on the Property, generally described as a hotel and conference center, a 5,000-seat performance venue and arena, ground floor retail with office space, and landscaping improvements to the gateway at U.S. Highway 59 and Fondren Road, 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 mixed-use retail and commercial development, and (ii) meet the commitments set forth in Article IV, Sections A and B 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 give notice of any proposed modification, removal or change to the Public Improvements to the City Representative for his or her review and comment. The City Representative 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, Sections A and B hereof. No such modification, removal or change will entitle Developer to reimbursement for costs which exceed the Maximum Reimbursement Amount. Additionally, modifications may be subject to a reduction in the 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. 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. 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 specification (hereafter, "Final Plans and Specifications"). Construction of the Public Improvements must be 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 during the progress of the construction and installation of the Public Improvements.

ARTICLE III REPRESENTATIONS

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

The Authority 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 Authority 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 Authority, 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 Authority under any agreement or instrument to

which the Authority is a party or by which the Authority 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 Authority, 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 to the Authority, for Developer, the Reimbursement Amount in accordance with the terms and conditions of this Agreement, Developer agrees to fulfill the following conditions in order to receive the Reimbursement Amount:

A. Project and Public Improvements Funding. Within twelve (12) months after the Effective Date of this Agreement, Developer shall certify to the City that private funds and sources totaling approximately One Hundred Sixty Million Dollars (\$160,000,000.00) are available or have been expended towards the Project and the Public Improvements Cost; provided, however, that the availability of such funds and sources may be conditioned upon the satisfaction of applicable pre-leasing, market and financing conditions. Failure of Developer to timely provide such certification to the City shall constitute a breach of this Agreement.

B. Job Creation. Developer agrees that jobs will be created by the development of the Project. The Parties acknowledge that 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 (including but not limited to valets, janitors and landscapers) which provide a regular work schedule of at least thirty-five (35) hours per week; provided that two (2) positions providing part-time work schedules shall be equivalent to one job. In order to assure the City that the Project will produce sufficient job creation, Developer agrees to make the following certifications ("Job Creation Certification"):

Number of Jobs	Job Creation and Retention Schedule
150	To be created and retained by the Reimbursement Date
200	To be created and retained by the 1 st anniversary of the Reimbursement Date
200 or more	To be retained by the 2 nd anniversary of the Reimbursement Date, and all subsequent anniversaries

To the extent that the number of jobs created or retained by the Project for any year exceeds the minimum required for such year (as set forth above), Developer may (i) certify the number of excess jobs in its Job Creation Certification for that year and (ii) count the number of excess jobs in its Job Creation Certification for the following year in order to meet the minimum required for that year. For purposes of the Job Creation Certification, Developer shall provide the City with reports from Developer's Human Resources Department (or other, similar department) certifying the number of jobs created for each reimbursement year. Such certification shall include a description of the data Developer used to determine the number of jobs created by the Project. Payment of the Reimbursement Amount is subject to Developer's timely certification as described in this Section B. A sample certification document is attached hereto as **Exhibit D**.

On each anniversary of the Reimbursement Date, Developer shall submit documentation as reasonably necessary to satisfy the Job Creation Certification, which documentation shall include an affidavit from a corporate officer of Developer, or the corporate officer's designee, attesting to the number of jobs created or retained and indicating the source of the information.

C. Corporate Entity Ownership. Developer shall maintain the Property in its, taxable, for-profit, corporate form, currently named Beechnut Street, Inc., during the Term of this Agreement and for a period of thirty (30) years after the Term of this Agreement.

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

E. Inspection; Conveyance. As construction of each integral stage 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, the City will accept the Public Improvements, whereupon such portion of the Public Improvements shall be operated and maintained by the City at its sole expense.

F. 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 City Representative 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. 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.

G. 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.

H. 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.

I. 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.

J. Business Opportunity. The 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 the requirements for good faith efforts on file with the City Office of Business Opportunity ("OBO"). Developer shall make good faith efforts to award the maximum number of subcontracts or supply agreements to entities that are certified by the City as MWBEs.

K. 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 Authority with all such records for review and approval prior to payment of the Reimbursement Amount.

L. Taxes and Other Charges. Developer agrees not to protest any valuation of the Property or the buildings and other structures located on the Property for ad valorem taxation below \$10,000,000 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, 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 Authority copies of all tax statements received from any taxing unit for the Property during the term of this Agreement.

Developer further agrees that it will require subsequent 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, as the same becomes due and payable, 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 ADMINISTRATIVE ROLE OF THE AUTHORITY

A. Administrative Capacity. The Authority shall act as the City's administrator in connection with reimbursing Developer for eligible Public Improvements Costs, including ensuring that Developer complies with the terms of this Agreement.

B. Approval of Invoices. The Authority shall review and approve all invoices received from Developer to determine relevance to the Public Improvements and to confirm that, prior to payment of the Reimbursement Amount, (i) the Public Improvements have been conveyed to the City, if applicable; and (ii) Developer is in compliance with the terms of this Agreement.

C. The Authority shall deposit the Reimbursement Amount into the Authority Grant Revenue Fund and segregate the proceeds for the specific use of reimbursing Developer for the Public Improvement Costs.

D. Annual Disbursement. Subsequent to the Reimbursement Date, within fifteen (15) days after receipt of the Reimbursement Amount from the City, the Authority shall disburse payment of the Reimbursement Amount to Developer from the Authority Grant Revenue Fund for Public Improvement Costs incurred by Developer, as evidenced by approved invoices.

E. Annual Reporting. Each year that this Agreement is in effect, within one hundred twenty (120) days of the Authority's fiscal year end, the Authority shall provide the City Representative a copy of the Authority's annual fiscal audit and a report on (i) the amount of revenue in the Authority Grant Revenue Fund; and (ii) the amounts and purposes of expenditures from the Authority Grant Revenue Fund for Public Improvements Costs. The Authority shall also provide the City invoices and other documentation substantiating all payments to Developer of the Reimbursement Amount.

F. Disbursement of Final Payment. Prior to payment of the final Reimbursement Amount, the Authority shall provide the City a reconciliation of all Developer's expenditures for eligible Public Improvements Costs. The City may request the Authority to provide additional supporting documentation as necessary. The final payment of the Reimbursement Amount to Developer shall be the amount of the remaining actual costs for the Public Improvements, but not exceeding the Maximum Reimbursement Amount.

ARTICLE VI REIMBURSEMENT

A. Calculation of Reimbursement Amount. The Reimbursement Amount is an amount equal to seventy-five percent (75%) of the Incremental Increase in the City's ad valorem tax revenues collected and generated by the Project above the Base Property Tax as of January 1, 2013.

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 Developer is in compliance with its commitments set forth in Article IV of this Agreement (subject to the provisions of Article II, Section B), the City shall transfer the Reimbursement Amount to the Authority Grant Revenue Fund ("City Commitment"). The City shall pay the Reimbursement Amount within forty-five (45) days following the end of the month in which the City receives the ad valorem tax revenues generated by the Property. The City Commitment is an unconditional obligation of payment by the City solely from the Tax Revenues generated by the Project, and subject to Developer's and the Authority's fulfillment of and compliance with the terms and conditions of this Agreement. Except as otherwise expressly set forth in this Agreement, payment of the Reimbursement Amount is not subject to any reduction, whether offset or otherwise. The City and the Authority shall never be obligated to make any payment to Developer from any funds other than the Tax Revenues generated by the Project.

C. 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), the City shall not remain obligated to transfer the Reimbursement Amount for such Public Improvement to the Authority Grant Revenue Fund, and the Maximum Reimbursement Amount will be reduced by an amount equal to the total cost allocated to such Public Improvement.

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 ("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. Job Creation Default. If Developer does not satisfy the Job Creation Certification for any year during the Term of this Agreement (commencing on the Reimbursement Date) and if such failure continues for thirty (30) days after written notice to the Developer ("Job Creation Default"), the City may, as its sole and exclusive remedy, beginning on the date which is thirty (30) days after such written notice, until Developer has provided evidence that it has satisfied the Job Creation Certification, reduce the Maximum Reimbursement Amount to be paid to Developer by the percentage by which Developer does not satisfy the Job Creation Certification. A reduction in the Maximum Reimbursement Amount as a result of Developer's failure to satisfy the Job Creation Certification in a calendar year is irrevocable and may not be recouped by Developer at any time, regardless of whether Developer satisfies the Job Creation Certification in a subsequent calendar year.

C. General Events of Default. A Party shall be deemed in default under this Agreement (which shall be deemed a breach hereunder) if such Party fails 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 its representations contained in Article III of this Agreement are false. Developer's failure to construct any portion of the Public Improvements in **Exhibit B** shall not constitute an event of default so long as Developer has modified the list of Public Improvements in accordance with Article II, Section B of this Agreement.

D. Notice. Before the failure of any Party to perform its obligations under this Agreement, except in the case of a Payment Default or a Job Creation Default, is deemed to be a breach of this Agreement, 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 breach of this Agreement, except for a Payment Default, may be found to have occurred if performance has commenced to the reasonable satisfaction of the complaining Party within thirty (30) days of the receipt by the defaulting Party of such notice.

E. Remedies. If the City fails to perform its obligations hereunder in substantial compliance with this Agreement (other than the financial obligations, which shall be in strict compliance) and, if such default remains uncured for a period of sixty (60) days after notice thereof is given, Developer shall have all rights and remedies to which it is entitled under this Agreement and under all applicable laws. 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. If Developer fails to satisfy any of the conditions and obligations hereunder that must be fulfilled in order for Developer to receive the Reimbursement Amount, and if any such condition or other obligation remains unsatisfied for a period of sixty (60) days after notice shall have been given, then the City, as its sole and exclusive remedy (as expressly provided herein) may terminate this Agreement by written notice to Developer and may pursue a reduction in the Maximum Reimbursement Amount as provided in 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 VIII 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:

R.E. "Corky" Dragoo, Jr.
Houston Baptist University dba Beechnut Street, Inc.
7502 Fondren Road
Houston, TX 77074-3298

If to the Authority:

Executive Director, Southwest Houston Redevelopment Authority
c/o Hawes, Hill, Calderon LLP
P.O. Box 22167
Houston, TX 77227-2167

With a copy to:

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

If to the City:

Chief Development Officer
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 (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 Authority, 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 Developer, the Authority, and the City. No course of dealing on the part of Developer, the Authority, or the City nor any failure or delay by Developer, the Authority, 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. 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. Neither the City nor the Authority 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 Authority's Chairman of the Board may consent to a qualifying assignment under this Section on behalf of the Authority.

F. 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.

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 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.

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 assumed primary responsibility for the drafting of this Agreement.

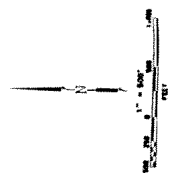
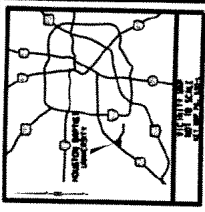
L. Conflicts with Ordinances. The Parties agree that, in the event of a conflict between the provisions of this Agreement and any City ordinance or regulation by any other agency over which the City has control, whether heretofore or hereafter adopted, the provisions of this Agreement shall govern matters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

[EXECUTION PAGE FOLLOWS]

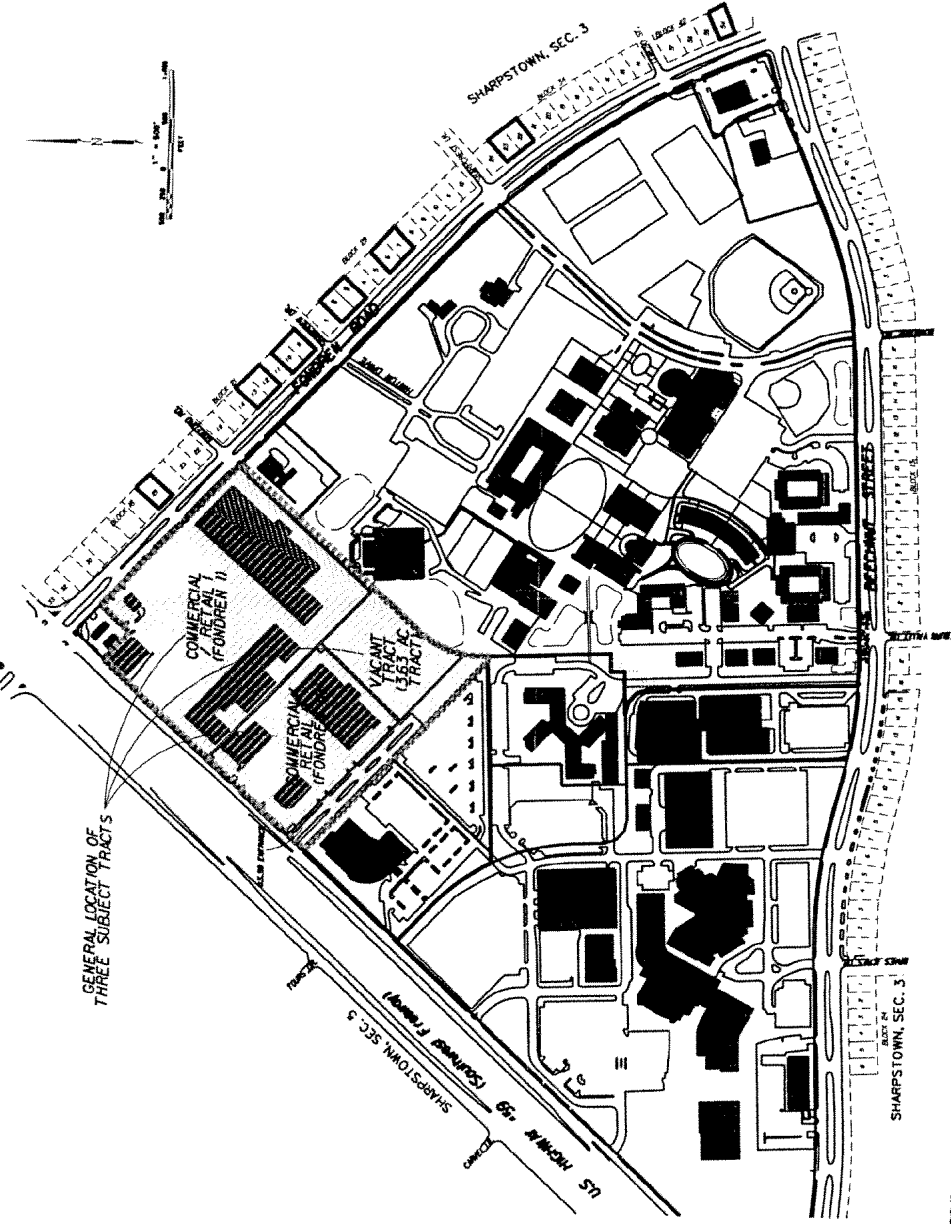
IN TESTIMONY OF WHICH this instrument has been executed in multiple counterparts, each of equal dignity and effect, on behalf of the Developer, the Authority and the City, effective as of the Effective Date defined herein.

CITY: CITY OF HOUSTON, a Texas home-rule municipal corporation <u>Indice D. Parker</u> Mayor <u>Matthew B. Rapp</u> Date: <u>3-25-13</u> ATTEST/SEAL: <u>[Signature]</u> City Secretary Date: <u>3-25-13</u> COUNTERSIGNED: <u>Ronald C. [Signature]</u> City Controller <u>Jenifer [Signature]</u> Date: <u>3-28-13</u> APPROVED AS TO FORM: <u>Donna Capps</u> Assistant City Attorney	DEVELOPER: Houston Baptist University dba Beechnut Street, Inc. By: <u>[Signature]</u> Name: <u>Sandra N. Mooney</u> Title: <u>Vice President - Financial Operations</u> Date: <u>March 18, 2013</u> AUTHORITY: Southwest Houston Redevelopment Authority By: <u>[Signature]</u> Name: <u>Welcome Wilson, Jr.</u> Title: <u>Chairman</u> Date: <u>March 14, 2013</u>
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EXHIBIT A
DESCRIPTION OF PROPERTY



GENERAL LOCATION OF
THREE SUBJECT TRACTS



THIS MAP IS A COPY OF THE ORIGINAL RECORD, AND IS NOT A REPRODUCTION OF THE ORIGINAL RECORD. THE ORIGINAL RECORD IS THE ONLY AUTHORITY FOR THE LOCATION OF THE SUBJECT TRACTS.

PROJECT NO.	8-12-21	DATE	1-1-21
PLAT NO.	1000000000	BOOK	1000000000
SECTION	10-10-1000	PAGE	1000000000
INDEX	1000000000	DATE	1-1-21

HOUSTON BAPTIST UNIVERSITY
TIR2 TRACTS - GENERAL LOCATION
HOUSTON, TEXAS

ANDREW LONNIE SIKES, INC.
1000000000 STREET, HOUSTON, TEXAS 77000-0000
PHONE: 1000000000

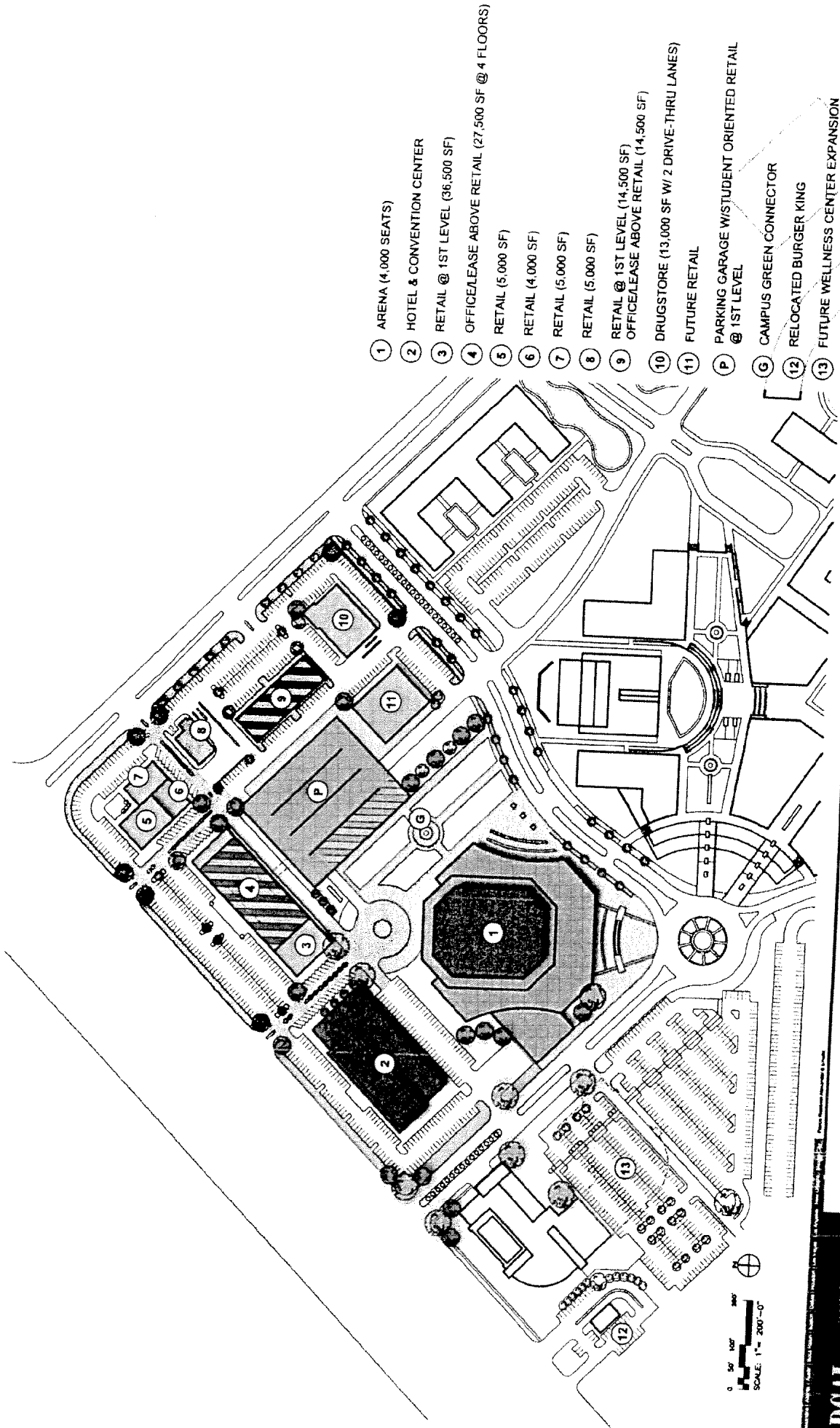
EXHIBIT B
LIST OF PUBLIC IMPROVEMENTS

Houston
Baptist
University

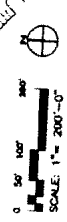
Infrastructure Improvements

Description	Estimated Cost
1. New Ring Road and Essential Revisions	\$ 1,524,850
2. Public Access Facilities (Tennis Courts & Parking)	\$ 615,500
3. Landscape 59 Frontage, Entrance & Fondren Rd Esplanades	\$ 545,650
4. New Detention Lake & Revised Drainage System	\$ 1,275,400
5. Necessary Demolition & Hauling of Existing Facilities	\$ 468,600
Total	\$ 4,430,000

EXHIBIT C
PROJECT SITE PLAN



- ① ARENA (4,000 SEATS)
- ② HOTEL & CONVENTION CENTER
- ③ RETAIL @ 1ST LEVEL (86,500 SF)
- ④ OFFICE/LEASE ABOVE RETAIL (27,500 SF @ 4 FLOORS)
- ⑤ RETAIL (5,000 SF)
- ⑥ RETAIL (4,000 SF)
- ⑦ RETAIL (5,000 SF)
- ⑧ RETAIL (5,000 SF)
- ⑨ RETAIL @ 1ST LEVEL (14,500 SF)
OFFICE/LEASE ABOVE RETAIL (14,500 SF)
- ⑩ DRUGSTORE (13,000 SF W/ 2 DRIVE-THRU LANES)
- ⑪ FUTURE RETAIL
- P PARKING GARAGE W/STUDENT ORIENTED RETAIL @ 1ST LEVEL
- G CAMPUS GREEN CONNECTOR
- ⑫ RELOCATED BURGER KING
- ⑬ FUTURE WELLNESS CENTER EXPANSION



DEVELOPMENT ZONE PROPOSAL



Science Lab Building Option 6

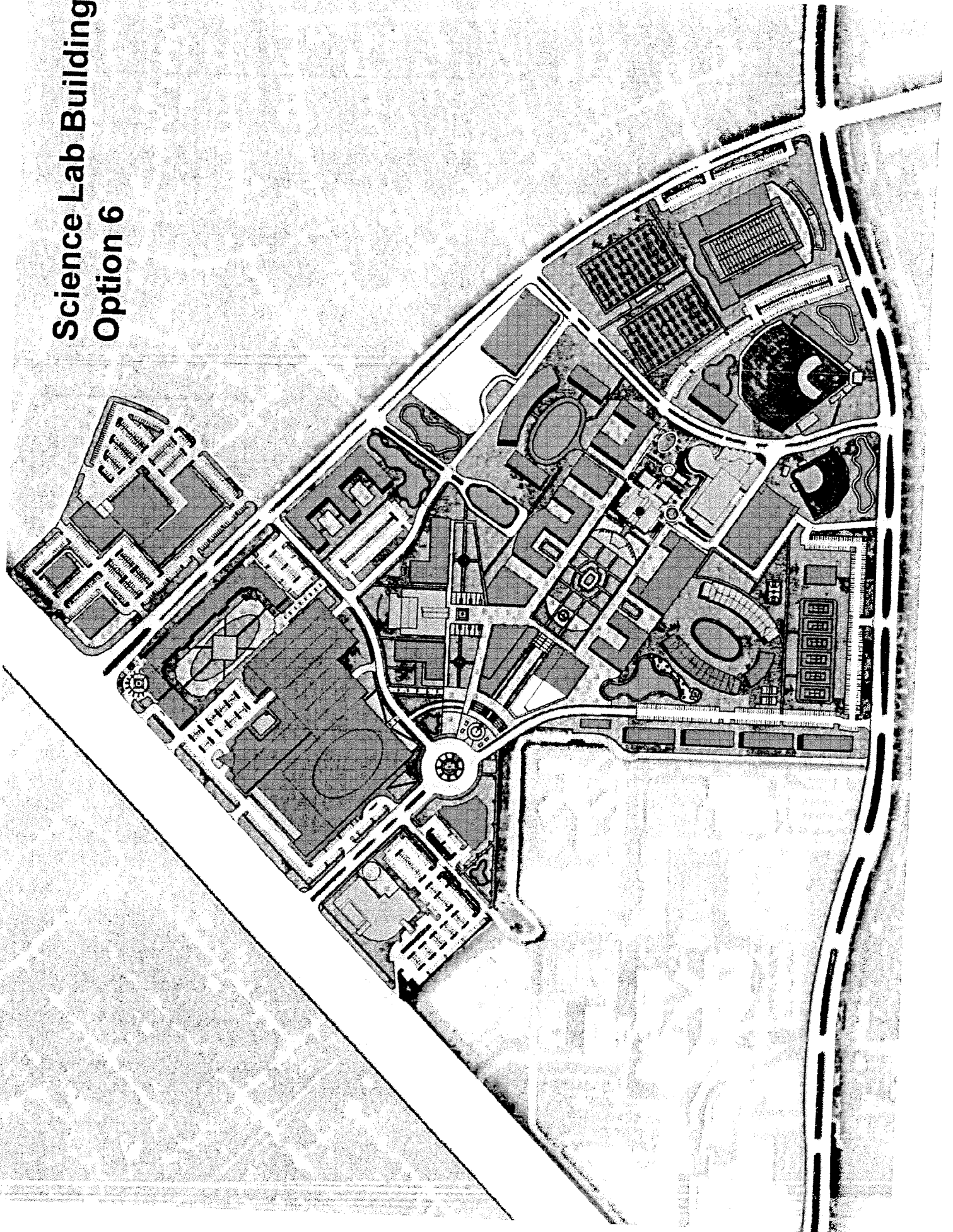


EXHIBIT D

Sample Job Certification Document

City Of Houston Chapter 380 Agreement
Economic Development Compliance Statement for Houston Baptist
University DBA Beechnut Street, Inc.

Reporting Year: January 1 through December 31, 20XX

Agreement: Economic Development Agreement between the City of Houston ("City")
the Southwest Houston Redevelopment Authority and Houston Baptist
University DBA Beechnut Street, Inc. ("Developer").

Property: 7502 Fondren Road, Houston, Texas 77074

This statement is issued pursuant to the requirement of Article IV of the Agreement.
Accordingly, James T. Kirk, corporate officer and authorized representative of HBU,
hereby states and certifies the following:

1. Pursuant to Section A, private funds and sources totaling approximately
\$160,000,000 are available or have been expended towards the Project and
Public Improvement Costs within 12 months after the effective date of the
agreement.
2. Pursuant to Section B, _____ full time equivalent positions were created and
retained by the reimbursement date.
3. Pursuant to Section C, the Developer has maintained the Property in its tax
taxble, for-profit, corporate form, currently named Beechnut Street, Inc.
4. Pursuant to Section D, the Developer has conveyed the Public Improvements to
the City, including rights of way.

IN WITNESS WHEREOF, on this ___ day of _____, 20__.

James T. Kirk
Executive Vice President
Houston Baptist University

SUBSCRIBED AND SWORN TO BEFORE ME on this ___ day of _____, 20__.

Notary Public, State of Texas