

AN ORDINANCE 2017-08-03-0530

APPROVING THE LOMA MESA DEVELOPMENT CHAPTER 380 GRANT AGREEMENT LOCATED IN THE MISSION DRIVE-IN TAX INCREMENT REINVESTMENT ZONE (TIRZ) 32 FOR THE LOMA MESA DEVELOPMENT, A 139 MARKET RATE, SINGLE FAMILY HOME SUBDIVISION, LOCATED NEAR 5019 ROOSEVELT AVENUE, IN ORDER TO PROVIDE \$1.3M FOR PUBLIC INFRASTRUCTURE AS APPROVED BY THE TIRZ BOARD.

* * * * *

WHEREAS, tax increment financing is an economic development tool authorized through the Tax Increment Financing Act (the "Act"), Chapter 311 of the Texas Tax Code; and

WHEREAS, in accordance with the Act the City through City Council Ordinance No. 2008-12-11-1174, established Tax Increment Reinvestment Zone Number Thirty-Two, known as the Mission Drive-In TIRZ ("TIRZ"), and a Board of Directors ("Board") authorized with all the rights, powers, and duties provided by the Act to such boards in order to promote development and revitalization activities within TIRZ; and

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code and Sections 311.010(b) and 311.010(h) of the Act, the City and the Board are authorized to grant funds to promote state and local economic development and to stimulate business and commercial activity in the municipality and within the boundaries of the TIRZ; and

WHEREAS, the City and the Board recognize the importance of their continued role in economic development, community development, planning and urban design; and

WHEREAS, on August 26, 2016, WE- Roosevelt L.P. ("Grantee"), applied for TIRZ funding to support the development of the Loma Mesa Project, a subdivision comprising 139 single family housing units, generally located on or about 5019 Roosevelt Avenue, San Antonio, TX 78214, 26.36 acres situated west of the intersection of Roosevelt Avenue and Rilling Road and within City Council District 3 and the TIRZ boundaries; and

WHEREAS, on June 27, 2017, the Board passed Resolution T32 2017-06 27-01R, attached as **Exhibit A**, which authorizes the execution of a Chapter 380 Economic Development Grant Agreement with Grantee to cause the Loma Mesa Development Project to be undertaken and completed; **NOW THEREFORE:**

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

SECTION 1. The terms and conditions of the Chapter 380 Economic Development Grant Agreement referenced above are hereby approved. The City Manager or her designee is

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authorized to execute this Agreement, a copy of which, in substantial final form is set out in **Attachment I**. A copy of the fully executed agreement will be substituted for **Attachment I** upon receipt of all signatures.

SECTION 2. This Ordinance authorizes the commitment of up to One Million, Three Hundred Thousand Dollars, and No Cents (\$1,300,000.00) in reimbursable tax increment funding from the Mission Drive-In TIRZ Tax Increment Fund. There is no direct fiscal impact to the City's General Fund.

SECTION 3. City staff is authorized to amend the Mission Drive-In Project and Finance Plans to include the Loma Mesa Development Project.

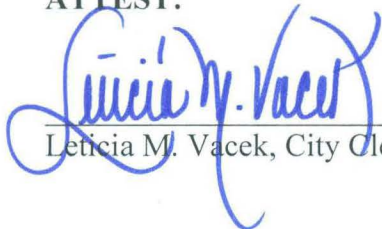
SECTION 4. This Ordinance shall be effective immediately upon passage by eight affirmative votes; otherwise it shall be effective on the tenth day after passage.

PASSED AND APPROVED this 3rd day of August, 2017.



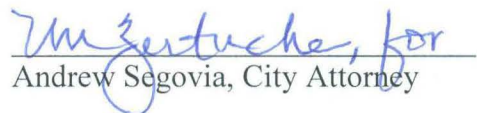
M A Y O R
Ron Nirenberg

ATTEST:



Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:



Andrew Segovia, City Attorney

Agenda Item:	15 (in consent vote: 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17)						
Date:	08/03/2017						
Time:	11:19:25 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance approving a 380 Grant Agreement in an amount not to exceed \$1,300,000.00 for public infrastructure located within the Mission Drive-In Tax Increment Reinvestment Zone (TIRZ) 32 near 5019 Roosevelt Avenue, for the Loma Mesa Development, a 139 unit market rate, single family home subdivision, as approved by the TIRZ Board. [Peter Zanoni, Deputy City Manager; Verónica R. Soto, AICP, Director, Neighborhood and Housing Services]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ron Nirenberg	Mayor		x				
Roberto C. Treviño	District 1		x				x
William Cruz Shaw	District 2	x					
Rebecca Viagran	District 3		x			x	
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Greg Brockhouse	District 6		x				
Ana E. Sandoval	District 7		x				
Manny Pelaez	District 8		x				
John Courage	District 9		x				
Clayton H. Perry	District 10		x				

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ATTACHMENT I

**LOMA MESA DEVELOPMENT
CHAPTER 380 ECONOMIC DEVELOPMENT
GRANT AGREEMENT**

between

THE CITY OF SAN ANTONIO,

**THE BOARD OF DIRECTORS FOR
MISSION DRIVE-IN TAX INCREMENT REINVESTMENT ZONE,**

and

WE- ROOSEVELT L.P.

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WHEREAS, City Council authorized the City Manager, or her designee, to enter into this Agreement to grant funds as described herein, in accordance with City Ordinance No. 2017-08-03-0530 passed and approved on 3rd Day of August, 2017, and attached as Exhibit C;

NOW THEREFORE:

The Parties, by execution of this Agreement, are bound to the mutual obligations set out herein and to the performance and accomplishment of the tasks hereinafter described:

ARTICLE I. PURPOSE

- 1.1 The purpose of this Agreement is to promote state and local economic development and diversification and stimulate business and commercial activity within the municipality and TIRZ by assisting Grantee in causing the Project to be undertaken and completed resulting in the Investment within the Project Site once completed.

ARTICLE II. TERM

- 2.1 The term of this Agreement is ten (10) years commencing on August 24, 2017 ("Commencement Date") and terminating on August 24, 2027 (the "Term"), unless sooner terminated as provided for in this Agreement.

ARTICLE III. THE PROJECT

- 3.1 The Project consists of the development of the Project Site into a 26.36 acre residential subdivision, which shall include 139 single family housing units, a recreation area, and public improvements and as more specifically described in the plat information attached as Exhibit D.
- 3.2 The Parties acknowledge that Grantee is the previous fee-simple owner of the Project Site and has conveyed the Project Site to KB Home Lone Star Inc. ("KB Home"), as described in attached Exhibit A, Grantee has affirmed that the conveyance was necessary to cause the Project to be undertaken and completed and KB Home has affirmed through a "Waiver of Rights Agreement", attached as Exhibit E, that Grantee has the sole rights to incentives under any agreements with the City and the Board.

ARTICLE IV. OBLIGATIONS OF GRANTEE

- 4.1 In order to receive incentives under this Agreement, Grantee shall: (1) undertake and complete the Project; (2) meet the minimum Investment at the Project Site; and (3) comply with all other terms and conditions of this Agreement, to include providing any necessary documentation to establish that the Project and Investment were completed. The Project shall be completed within four (4) years after the execution of the Agreement and no later than December 31, 2021.
- 4.2 Within ninety (90) days after the execution of this Agreement, Grantee shall provide the City and the Board, an express waiver of rights from KB Home, in accordance with Exhibit E, to any and all incentives to the Project Site with the exception of fee waivers which have been provided by the City to KB Home in accordance with the City's Inner City Reinvestment Infill Policy.
- 4.3 Within one year after the execution of this Agreement, Grantee shall commence or cause the commencement of the construction of 139 homes, public improvements and a recreational area at the Project Site.

- 4.4 Grantee shall complete or cause the completion of the Project, within four (4) years after the execution date of this Agreement and no later than December 31, 2021. The Project shall be considered "completed" after:
- A. inspection by a design engineer and receipt by the City and the Board of a certification letter from the design engineer, which certifies that the Project is:
 - i designed in a manner as to endure without need for maintenance, repair or replacement for five (5) years, taking into consideration the site and traffic conditions, present and future, at and near the Project Site;
 - ii constructed according to the specifications required by the engineer's design for each improvement;
 - iii for streets and drainage improvements only, be or have been subject to the 1 year extended warranty bond required by Chapter 35 of the City's Unified Development Code; and,
 - B. inspection and approval by the City, as evidenced by a letter of acceptance issued by an authorized City official.
- 4.5 Grantee shall provide to the City and the Board Project Status Updates within sixty (60) days following the execution of this Agreement. Thereafter, Grantee shall provide to the City and the Board Project Status Updates on a quarterly basis on the 15th day of January, April, July and October throughout the Term of this Agreement, using the form attached Exhibit F, as it may be amended. Project Status Updates shall include: construction progress, project expenditures and its compliance with all contractual requirements.
- 4.6 Grantee shall cause the Project to be developed in compliance with all applicable federal, state, and local laws, and regulations, including the City's Unified Development Code, and rules and regulations promulgated by the Environmental Protection Agency (EPA), Texas Department of State Health Services (TDSHS), Texas Commission on Environmental Quality (TCEQ), and all regulations related to Hazardous Substances or exposure to ACM and Hazardous Substances.
- 4.7 Grantee shall promote economic development through the hiring of local subcontractors and workforce and shall pay or cause to be paid prevailing wages as applicable to the trade being performed.

ARTICLE V. OBLIGATIONS OF THE CITY AND THE BOARD

- 5.1 The City and the Board will make an Economic Development Program Grant available to Grantee in accordance with the terms and conditions of this Agreement.
- 5.2 Neither the City nor the Board shall be liable to Grantee or any other entity or person for costs or expenses incurred, or improvements made in furtherance of the Project or at the Project Site.

ARTICLE VI. ECONOMIC DEVELOPMENT PROGRAM GRANT

- 6.1 In consideration of full and satisfactory performance of all activities required by this Agreement, the City and the Board shall make an Economic Development Program Grant available to Grantee in a cumulative amount not to exceed ONE MILLION THREE HUNDRED THOUSAND DOLLARS AND NO CENTS (\$1,300,000.00) (the "Grant Funds") in taxes above the Project Site's 2017 real property tax value (the "Tax Increment") over a ten (10) year period, based upon the City's ninety-percent (90%) participation level in the TIRZ. All requests for reimbursement

shall be initiated by the submission of an application for reimbursement to the City's TIF Unit for Board approval and authorization and shall include a list of eligible addresses, including their respective Bexar County Appraisal District account information, which will be verified by the City. Grant Funds will be disbursed annually as follows:

- A. Beginning in the tax year immediately following the completion of the Project, (and each year thereafter for the Term of the Agreement), Grantee may request a disbursement of Grant Funds in the amount equal to ninety percent (90%) (or the current participation level of the City in the TIRZ at the time of the request) of: (a) the actual amount of real property taxes paid to the City with respect to the Project Site at the time of the request for the immediately preceding tax year, *minus* (b) the actual amount of real property taxes paid to the City with respect to the Project Site for tax year ending in December 31, 2017 (the "Base Year"), as determined by the Bexar Appraisal District and verified by the City. The result being referred to herein as the "Annual Property Tax Increment Reimbursement."
- B. Subject to availability and priority of payment (as described in Section 6.2 below), upon request by Grantee of Grant Funds in accordance with this Agreement, the City and the Board shall make Annual Property Tax Increment Reimbursement(s) available to Grantee within sixty (60) days following confirmation by the City of the real property taxes that have been paid on the Project Site.
- C. Annual Property Tax Increment Reimbursements are subject to availability and priority of payment and are not intended to reimburse all eligible and approved costs incurred in connection with the Project or expenses incurred by Grantee for performance of the Grantee obligations under the Agreement. The City and the Board cannot guarantee that available Grant Funds shall completely reimburse Grantee.
- D. No Grant Funds shall be disbursed to Grantee for unpaid and/or uncollected ad valorem taxes for which payment is sought. No Grant Funds other than those collected from the Project Site shall be disbursed to Grantee.
- E. Grantee shall submit no more than one request for reimbursement per year for the Project Site and Grantee shall receive no more than one payment of the reimbursement per year. For each tax year for which payment of the Annual Property Tax Increment Reimbursement is sought: (1) evidence from the Bexar County Tax Assessor indicating the amount of taxes paid to City for the Project Site from applicable property tax accounts, and (2) evidence that all taxes owed by Grantee on the portion of the Project Site owned by Grantee, if any, have been paid in full. The City and/or the Board may seek additional documentation before authorizing reimbursement. Failure to submit the application and all other necessary information in accordance with this Agreement may delay the reimbursement payment.
- F. It is expressly understood that the Project Site will be divided into single family home units and that owners of individual family home units shall be responsible for their respective payments of property taxes owed. It is further understood that, for purposes of calculating the reimbursement payment to Grantee, only those taxes paid at the time of the request will be considered for reimbursement. Individual tax accounts which have not been paid at the time of the request will not be considered for reimbursement for the respective tax year, nor will they be retroactively reimbursed through future requests.

G. If Grantee and/or any individual tax account holder(s) subsequently receive a property tax refund as a result of a tax protest (or otherwise) through the Bexar County Appraisal District, the amount of the refund will be deducted from the following tax year's reimbursement payment. The foregoing shall only apply if the subject property tax account was paid in full and Grant Funds were, for said account, paid to Grantee as reimbursement hereunder.

6.2 **Priority of Payment.** Grantee acknowledges that the disbursement of Grant Funds is subject to availability of funds in the Tax Increment Fund and the priority of payment in accordance with the TIRZ Finance Plan:

- i. eligible startup Administrative Costs;
- ii. ongoing Administrative Costs;
- iii. reimbursement to the City for costs of the repair, replacement, and maintenance of public improvements and associated costs as described in any Development Agreement, and
- iv. reimbursement to Developers, if any, and/or the City for public improvements and eligible projects approved by the TIRZ Board.

6.3 If Available TIF Funds from the TIRZ do not exist in an amount sufficient to make Annual Property Tax Increment Reimbursement in full when payments are due, partial payment shall be made in the order of priority described in Section 6.2 of this Article, and the remainder shall be paid as TIF Funds become available. No fees, costs, expenses, interest or penalties shall be paid to the Parties for any partial or late payment.

6.4 If any payment to Grantee is held invalid, ineligible, illegal, or unenforceable under federal, state, or local laws, including but not limited to the charter, codes, or ordinances of the City, then such invalid, ineligible, illegal, or unenforceable payment shall be repaid in full by Grantee to the TIRZ for deposit into the TIF Fund, and that the remainder of this Agreement shall be construed as if such invalid, illegal, or unenforceable payment was never contained in this Agreement.

ARTICLE VII. RETENTION AND ACCESSIBILITY OF RECORDS

7.1 Grantee shall maintain the fiscal records and supporting documentation for expenditures of disbursed Grant Funds associated with this Agreement. Grantee shall retain such records and any supporting documentation for a period of four (4) years from the end of Agreement Term, unless required to be retained for a period longer than four (4) years by State law or court order.

7.2 Grantee shall, following reasonable advance written notice from the City and the Board, give their authorized representatives, access to and the right to examine all records i.e. material information related to the Project including all books, accounts, records, audit reports, files, documents, written or photographic material videotape or other papers, things, or property related to the costs and the expenditure pertaining to this Agreement (the "Records").

7.3 Grantee shall provide the City and the Board access to the Records and information needed to verify that Grantee is and has been in compliance with the provisions of this Agreement and to verify that the Grant Funds are used in accordance with the terms of this Agreement.

7.4 If a good faith dispute or question arises as to the validity of the information provided by Grantee, the City and the Board reserve the right to require Grantee to obtain an independent firm to verify the information. The certified statement by an independent firm shall be provided at the sole cost of Grantee. The rights to access records shall continue as long as the records are retained by Grantee. Failure to provide reasonable access to the records to authorized City representatives shall be cause for the City and the Board to provide notice of intent to default.

- 7.5 Grantee's obligation to retain Records and accessibility of Records shall survive the termination of the Agreement after completion of the Term.

ARTICLE VIII. MONITORING

- 8.1 The City and the Board reserve the right to confirm Grantee's compliance with the terms and conditions of this Agreement. Grantee shall provide or cause the City and the Board to be provided access to the Project Site for inspections during and upon completion of the Project. Grantee shall provide or cause the City and the Board to be provided access to Records and information reasonably necessary to assess Grantee's compliance with this Agreement.
- 8.2 The City and the Board will provide Grantee a written report of the monitor's findings. If the monitoring report notes deficiencies in Grantee's performance under this Agreement, the monitoring report shall include the requirements and actions to be taken by Grantee to correct such deficiencies, which shall be completed within a reasonable amount of time. Failure to take action specified in the monitoring report may be cause for termination of this Agreement.

ARTICLE IX. INDEPENDENT CONTRACTOR

- 9.1 It is expressly understood and agreed by the Parties hereto that Grantee is not an agent of representative of the City and/or the TIRZ and that Grantee, its employees, partners, and subcontractors are not employees or contractors of the City and the Board.

ARTICLE X. CONFLICT OF INTEREST

- 10.1 The Charter of the City of San Antonio and the City of San Antonio Code of Ethics prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Code of Ethics, from having a direct or indirect financial interest in any contract with the City. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:
- A. a City officer or employee; his or her spouse, sibling, parent, child or other family member within the first degree of consanguinity or affinity;
 - B. an entity in which the officer or employee, or his or her parent, child or spouse directly or indirectly owns (I) 10 percent or more of the voting stock or shares of the entity, or (ii) 10 percent or more of the fair market value of the entity; or
 - C. an entity in which any individual or entity listed above is (I) a subcontractor on a City contract, (ii) a partner or (iii) a parent or subsidiary entity.
- 10.2 Pursuant to the subsection above, Grantee warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. Grantee further warrants and certifies that it has tendered to the City a Contracts Disclosure Statement in compliance with the City's Ethics Code.

ARTICLE XI. NONDISCRIMINATION AND SECTARIAN ACTIVITY

- 11.1 Grantee understands and agrees to comply with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X of the City Code, and further shall use reasonable efforts to ensure that no person shall, on the ground of race, color, national origin, religion, sex,

age, gender (to include transgender), sexual orientation, veteran status or disability, be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied access to any program or activity funded in whole or in part under this Agreement.

- 11.2 None of the performances rendered under this Agreement shall involve, and no portion of the Grant Funds received by Grantee shall be used to support any sectarian or religious activity. Nor shall any facility used in the performance of this Agreement be used for sectarian instruction or as a place of religious worship.
- 11.3 Grantee shall include or cause to be included the substance of Article XI herein, in all sub-grant and contractor agreements.

ARTICLE XII. LEGAL AUTHORITY

- 12.1 Each Party assures and guarantees to the other that each possess the legal authority to enter into this Agreement, to receive/deliver the Grant Funds authorized by this Agreement, and to perform its obligations under this Agreement.
- 12.2 The person(s) signing and executing this Agreement on behalf of each Party or representing themselves as signing and executing this Agreement on behalf of a Party, hereby guarantees that s/he or they have been duly authorized to execute this Agreement, on behalf of that Party and to validly and legally bind that Party to all terms, performances and provisions set forth.
- 12.3 The City and the Board shall have the right to suspend or terminate this Agreement in accordance with Articles XIII. and XIV. herein, if there is a dispute as to the legal authority, of either Grantee or the person signing this Agreement, to enter into this Agreement, any amendments hereto or failure to render performances hereunder. Grantee is liable to the TIRZ for any money it has received from the City and the Board for performance of the provisions of this Agreement if the City and the Board suspend or terminate this Agreement for reasons enumerated in this Section.

ARTICLE XIII. LITIGATION AND CLAIMS

- 13.1 Under no circumstances will the Available Tax Increment Funds received under this Agreement be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding regarding this Agreement against the City, the Board or any other public entity including any cost incurred from violations or settlements of, or failure to comply with, federal and state regulations.
- 13.2 During the term of this Agreement, if Grantee files and/or pursues an adversarial proceeding regarding this Agreement against the City and/or the Board, without first engaging in good faith mediation of the dispute, then at the City's and/or the Board's option, all access to the funding provided for hereunder will be withheld.
- 13.3 Grantee shall give the City and the Board immediate written notice of any action, including any proceeding before an administrative agency, or legal action filed against Grantee arising out of performance of any activity under this Agreement. Except as otherwise directed by the City and the Board, Grantee shall furnish immediately to the City and the Board copies of all pertinent papers received by Grantee with respect to such action or claim. Grantee shall notify the City and the Board immediately of any legal action filed against the Grantee or any subcontractor, or of any proceeding filed under the federal bankruptcy code. Grantee shall submit a copy of such notice to the City and the Board within fifteen (15) days after receipt.

- 13.4 Grantee at the City's and/or the Board's option, could be ineligible for consideration to receive any future funding while any adversarial proceedings regarding this Agreement against the City and the Board remains unresolved if it was initiated without first engaging in good faith mediation of the dispute.
- 13.5 No funds provided under this Agreement may be used in the payment of any costs incurred from violations or settlements of, or failure to comply with, federal and state regulations.
- 13.6 This Agreement shall be governed by the laws of the State of Texas. Venue and jurisdiction arising under or in connection with this Contract shall lie exclusively in Bexar County, Texas.
- 13.7 For purposes of this Article, "adversarial proceedings" include any cause of action regarding this Agreement filed by Grantee against the City in any state or federal court, as well as any state or federal administrative hearing, but does not include Alternate Dispute Resolution proceedings, including arbitration. Nothing contained in this Article shall effect or otherwise affect the indemnity provisions contained in Article XI. above.

ARTICLE XIV. DEFAULT, TERMINATION AND RECAPTURE

- 14.1 This Agreement may be terminated by mutual consent and a written agreement of the Parties. In such case, the Parties shall agree upon the reason(s) of such termination, the termination conditions, the proposed pay-back plan of disbursed funds, and the proposed effective date of such termination.
- 14.2 The City and/or the Board shall have the right to terminate this Agreement for default, in whole or in part, at any time before the date of termination. Should the City and/or the Board determine that Grantee has failed to comply with any material term of this Agreement, which shall be considered an event of default. The City and/or the Board shall provide Grantee with written notification as to the nature of the default (the "Notice of Default"), and shall provide Grantee a sixty (60) day period (the "Cure Period") from the date of the City's and/or Board's written Notice of Default to cure any issue of default under this Agreement.
- 14.3 In the case of default, which cannot with due diligence be cured within such Cure Period, at the reasonable discretion of the City through City Council Ordinance, the Cure Period may be extended provided that Grantee shall immediately upon receipt of Notice of Default advise the City of Grantee's intention to cure such default and completes all steps necessary to cure such default within the extended period granted.
- 14.4 In the event Grantee fails to cure any default within the Cure Period (or extended period), the City and the Board may, upon issuance to Grantee of a written Notice of Termination, terminate this Agreement in whole or in part. Such notification shall include the reasons for such termination, the effective date of such termination; and, in the case of partial termination, the portion of the Agreement to be terminated.
- 14.5 The City and/or the Board may also terminate this Agreement, upon written notice of the occurrence of one or more of the following events: (1) failing to complete or cause the construction and completion of the Project satisfactorily; or, (2) termination of the TIRZ pursuant to State or local law.

- 14.6 Upon receipt of Notice of Termination, the City shall have the right to recapture all disbursed Grant Funds made under this Agreement and Grantee shall repay the Mission Drive-In TIRZ all Grant Funds disbursed to within sixty (60) days from the effective date of such termination.
- 14.7 All notices, requests or consents under this Agreement shall be (a) in writing, (b) delivered to a principal officer or managing entity of the recipient in person, by courier or mail or by facsimile, telegram, telex, cablegram or similar transmission, and (c) effective only upon actual receipt by such person's business office during normal business hours. If received after normal business hours, the notice shall be considered received on the next business day after such delivery. Whenever any notice is required to be given by applicable law or this Agreement, a written waiver thereof, signed by the Person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

Any notice sent under this Agreement shall be written and mailed with sufficient postage, sent by certified mail, return receipt requested, documented facsimile or delivered personally to an officer of the receiving Party at the following addresses:

THE CITY

City of San Antonio
c/o City Clerk
Attn: Risk Management Dept.
P.O. Box 839966
San Antonio, TX 78283-3966

THE BOARD

Mission Drive-In TIRZ #32
Attn: TIF Unit
1400 S Flores
San Antonio, TX 78204

GRANTEE

Loma Mesa Project
Attn: Jack J. Walker
733 13th Street
Boulder CO, 80302

ARTICLE XV. SPECIAL CONDITIONS AND TERMS

- 15.1 Grantee understands and agrees that if Grantee is a "business" and if the City or the Board's contribution under this Agreement is a "public subsidy" as that term is defined in Chapter 2264 of Subtitle F, Title 10, Tex. Govt. Code, as amended, then in the event of Grantee's conviction of knowingly employing an undocumented worker, Grantee shall return to the TIF fund of the Mission Drive-In TIRZ all funds that Grantee received from the City and the Board through this Agreement, with repayment required within six months of final conviction. Interest shall accrue at the rate of .5% per month until the time of such repayment from the date of final conviction.
- 15.2 The Parties agree that, in the event the City acting in accordance with State law, terminates the TIRZ, or adopts an ordinance that causes the termination date of the TIRZ to occur on a date earlier than provided in the ordinance that established the TIRZ, then this Agreement shall terminate on the date the TIRZ is terminated.
- 15.3 Grantee acknowledges that this Agreement and all documents ancillary to it are public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public. Nothing in this Agreement or any document delivered pursuant to it, waives an otherwise applicable exception to disclosure.

ARTICLE XVI. SUBCONTRACTING

- 16.1 Grantee shall ensure that performances rendered under all subcontracts of the Project comply with all provisions of this Agreement as if such performance were rendered by Grantee. Grantee shall bear full responsibility for the performances of all subcontractors who work on the Project.

- 16.2 Grantee, in subcontracting any of the performances hereunder, expressly understands that in entering into such subcontracts, the City and the Board shall not be liable to Grantee's subcontractors.
- 16.3 Grantee assures and shall obtain assurances from all of its subcontractors where applicable, to comply with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X of the City Code, and further shall use reasonable efforts to ensure that no person shall, on the ground of race, color, national origin, religion, sex, age, gender (to include transgender), sexual orientation, veteran status or disability, be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied access to any program or activity funded in whole or in part under this Agreement.

ARTICLE XVII. INSURANCE

- 17.1 Unless Grantee has secured and filed all necessary insurance waivers with the State of Texas that apply to any workers who perform services under funding provided by this Agreement, then the following shall apply:
- A. Grantee shall require that the Insurance requirements contained in this Section be included in all its contracts or agreements for public improvements, unless specifically exempt in writing by the City and the Board.
 - B. Within thirty (30) days after the execution of this Agreement, Grantee shall furnish copies of all required endorsements and Certificate(s) of Insurance to the City's TIF Unit, which shall be clearly labeled "Loma Mesa Project" in the description of operations block of the certificate. The original certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City and the Board will not accept a Memorandum of Insurance or Binders as proof of insurance. The certificate(s) or form must have the agent's signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City and the Board at the address listed in Section 17.2 of this Article. The City and the Board shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.
 - C. The City and the Board reserve the right to review the Insurance requirements of this Section during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by the City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will the City allow modification whereupon the City may incur increased risk.
 - D. Grantee's financial integrity is of interest to the City and the Board, therefore, subject to the Grantee's right to maintain reasonable deductibles in such amounts as are approved by the City. Grantee or Grantee's contractor, shall obtain and maintain in full force and effect during the construction of all public improvements undertaken for the development of the Project by Grantee or Grantee's contractor(s) and required by this Agreement, at the Grantee's or Grantee's contractor's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed:

TYPE	AMOUNTS
1. Workers' Compensation	Statutory
2. Employee Liability	\$1,000,000 / \$1,000,000 / \$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Products/Completed Operations d. Personal/Advertising Injury e. Contractual Liability f. Explosion, Collapse, Underground g. Environmental Impairment/Impact sufficiently broad to cover disposable liability h. Damage to property rented	For Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Owned/lease vehicles b. Non-owned vehicles c. Hired vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence

17.2 The City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the City and may require the deletion, revision or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties thereto or the underwriter of any such policies). Grantee and/or Grantee's contractor shall be required to comply with any such request and shall submit a copy of the replacement certificate of insurance to the City within ten (10) days of the requested change. Grantee and/or Grantee's contractor shall pay any costs incurred resulting from said changes. All notices under this Article shall be given to City at the following addresses:

City Clerk City of San Antonio Attn: Risk Management Dept. P.O. Box 839966 San Antonio, TX 78283-3966	City of San Antonio Planning & Community Development Dept. Attn: TIF Unit 1400 S. Flores San Antonio, TX 78204
---	--

17.3 Grantee agrees that with respect to the above-required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- A. Name Grantor (both the City of San Antonio and the Mission Drive In TIRZ #32) and its respective officers, officials, employees, volunteers and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed pursuant to this Agreement, with the exception of the workers' compensation and professional liability policies;
- B. Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;

- C. Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City and the Board; and
 - D. Provide thirty (30) days advance written notice directly to the City and the Board at the same address listed in Section 17.2 of this Article. of this Section regarding any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) days advance written notice for nonpayment of premium.
- 17.4 Within five (5) days of a suspension, cancellation or non-renewal of coverage, Grantee and/or Grantee's contractor shall provide a replacement Certificate of Insurance and applicable endorsements to the City and the Board at the addresses listed in Paragraph 17.2 of this Article. The City and the Board shall have the option to suspend Grantee's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.
- 17.5 In addition to any other remedies the City and the Board may have upon Grantee's and/or Grantee's contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City and the Board shall have the right to order Grantee to stop work hereunder, and/or withhold any payment(s) which become due to Grantee hereunder until Grantee and/or Grantee's contractor demonstrates compliance with the requirements hereof.
- 17.6 Nothing contained in this Agreement shall be construed as limiting in any way the extent to which Grantee may be held responsible for payments of damages to persons or property resulting from Grantee's or its contractors' performance of the work associated with this Agreement.
- 17.7 It is agreed that Grantee's and/or Grantee's contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City and the Board for liability arising out of operations associated with this Agreement.
- 17.8 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement.
- 17.9 Grantee agrees to obtain all insurance coverages with minimum limits of not less than those limits delineated in Section 17.1 (D) this Article from each contractor to Grant and provide a Certificate of Insurance and Endorsement that names Grantee, the City and the Board as additional insureds.

ARTICLE XVIII. INDEMNIFICATION

- 18.1 **GRANTEE COVENANTS AND AGREES THAT GRANTEE SHALL, AND AGREES TO CONTRACTUALLY REQUIRE EACH OF ITS CONTRACTORS TO, FULLY INDEMNIFY AND HOLD HARMLESS, THE CITY (AND THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, AND REPRESENTATIVES OF THE CITY), THE BOARD (AND THE OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, AND REPRESENTATIVES OF THE BOARD), AND ANY PARTICIPATING TAXING ENTITY (AND THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, AND REPRESENTATIVES OF ANY SUCH ENTITY), INDIVIDUALLY OR COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY OR DEATH AND PROPERTY DAMAGE, MADE UPON THE CITY, THE BOARD, AND/OR**

UPON ANY OF THE OTHER PARTICIPATING TAXING ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO GRANTEE'S NEGLIGENCE, WILLFUL MISCONDUCT OR CRIMINAL CONDUCT IN ITS ACTIVITIES UNDER THIS AGREEMENT, INCLUDING ANY SUCH ACTS OR OMISSIONS OF GRANTEE, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUB-CONSULTANTS OF GRANTEE, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OR PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS AGREEMENT, ALL WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY, THE BOARD, AND/OR THE OTHER PARTICIPATING TAXING ENTITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

GRANTEE SHALL ALSO INDEMNIFY, DEFEND AND HOLD THE PARTICIPATING TAXING ENTITIES HARMLESS FROM ANY CLAIM, DAMAGES, AND LIABILITY OF EVERY KIND, INCLUDING ALL EXPENSES OF LITIGATION, ATTORNEY'S FEES, AND PENALTIES ARISING FROM POLLUTION OF THE PROPERTY BY GRANTEE OR GRANTEE'S PREDECESSORS IN TITLE, OR THE FAILURE OF GRANTEE'S PREDECESSORS IN TITLE TO COMPLY WITH LOCAL STATE OR FEDERAL ENVIRONMENTAL LAWS OR REGULATIONS.

THE INDEMNITY PROVIDED FOR IN THE FOREGOING SECTIONS SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE CITY, ITS OFFICERS OR EMPLOYEES, IN INSTANCES WHERE SUCH NEGLIGENCE CAUSES PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE, EXCEPT TO THE EXTENT PROVIDED BELOW.

IN THE EVENT GRANTEE AND THE CITY AND/OR THE BOARD ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSE OF THE PARTIES UNDER TEXAS, FEDERAL, OR INTERNATIONAL LAW.

GRANTEE SHALL ADVISE THE CITY, THE BOARD, AND ANY PARTICIPATING TAXING ENTITY IN WRITING WITHIN 24 HOURS OF ANY CLAIM OR DEMAND AGAINST THE CITY, THE BOARD OR ANY PARTICIPATING TAXING ENTITY RELATED TO OR ARISING OUT OF THE GRANTEE'S ACTIVITIES, UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION, AND DEFENSE OF SUCH CLAIM, OR DEMAND AGAINST GRANTEE, OR THE CITY OR BOARD AT THE GRANTEE'S SOLE COST TO THE EXTENT REQUIRED UNDER THE INDEMNITY IN THIS SECTION. THE PROVISIONS OF THIS INDEMNITY ARE SOLELY FOR THE BENEFIT OF THE PARTIES. THE CITY, THE BOARD AND/OR ANY PARTICIPATING TAXING ENTITY SHALL HAVE THE RIGHT, AT THEIR OPTION AND AT THEIR OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING THE GRANTEE OF ANY OF ITS OBLIGATIONS.

- 18.2 GRANTEE SHALL AND DOES HEREBY AGREE TO DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, AND BOARD, AND THEIR RESPECTIVE AGENTS AND EMPLOYEES FROM AND AGAINST ALL ENCUMBRANCES, CLAIMS, SUITS, DEBTS, DUES, SUMS OF MONEY, ACCOUNTS, RECKONINGS, BOND, BILLS, COVENANTS, CONTROVERSIES, AGREEMENTS, AGENTS, DEMANDS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, AND ATTORNEY FEES**

OF ANY KIND OR NATURE WHATSOEVER WHICH ARE ASSERTED BY ANY PERSON OR ENTITY FOR PENALTIES OR SUMS DUE ANY WORKER OR AGENCY FOR SERVICES, LABOR OR MATERIALS, FURNISHED FOR THE PROJECT, GRANTEE'S INDEMNITY, OBLIGATIONS TO THE CITY UNDER THIS INDEMNIFICATION SHALL BE LIMITED TO ALL ENCUMBRANCES, CLAIMS, SUITS, DEBTS, DUES, SUMS OF MONEY, ACCOUNTS, RECKONINGS, BOND, BILLS, COVENANTS, CONTROVERSIES, AGREEMENTS, AGENTS, DEMANDS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, AND ATTORNEY FEES OF ANY KIND OR NATURE WHATSOEVER BY ANY PERSON OR ENTITY OR VIOLATIONS OF CHAPTER 2258 OF THE TEXAS GOVERNMENT CODE OR FOR ANY SUMS OR PENALTIES DUE ANY WORKER OR AGENCY FOR LABOR FURNISHED FOR THE PROJECT. TO THE EXTENT THAT THIS INDEMNIFICATION CONFLICTS WITH THE INDEMNIFICATION PROVISIONS IN SECTION 18.1 ABOVE, THE PROVISIONS IN SECTION 18.1 OF THIS ARTICLE CONTROL OVER THOSE SET FORTH IN THIS SECTION. PRIOR TO EXPENDING ANY MONEY THAT GRANTEE WOULD BE OBLIGATED TO INDEMNIFY, THE CITY OR THE BOARD SHALL SEND WRITTEN NOTICE TO GRANTEE DESCRIBING IN REASONABLE DETAIL THE CLAIM AND ALLOWING GRANTEE TO CURE SUCH CLAIM WITHIN 15 DAYS OF RECEIVING THE NOTICE.

ARTICLE XIX. DEBARMENT

- 19.1 By signing this Agreement, Grantee certifies that it will not award any funds provided under this Agreement to any party which is debarred, suspended or otherwise excluded from or ineligible for participation in assistance programs.

ARTICLE XX. RIGHTS UPON DEFAULT

- 20.1 It is expressly understood and agreed by the Parties that any right or remedy provided for in this Agreement shall not preclude the exercise of any other right or remedy under any other agreement by the Parties under any provision of law, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies. Failure to exercise any right or remedy hereunder shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

ARTICLE XXI. ASSIGNMENT

- 21.1 Grantee covenants and agrees that during the term of this Agreement, it shall notify the City and the Board in writing at least thirty (30) days prior to any sale or transfer of its business or Project and/or Project location. In the event of a sale or transfer, Grantee may assign its rights and obligations under this Agreement to an assignee only with the consent of the City and the Board. Any purchaser or transferee requesting an assignment of this Agreement shall be bound by all the terms and conditions of this Agreement. Failure to provide the required notification of sale or transfer may subject Grantee to the termination provisions in Article XIV. of this Agreement.

ARTICLE XXII. CHANGES AND AMENDMENTS

- 22.1 Except as specifically provided in Section 22.3 in this Agreement, any alteration, addition or deletion to the terms of this Agreement shall be by amendment, in writing and executed between the Parties to this Agreement subject to authorization by the City and the Board.

- 22.2 It is understood and agreed by the Parties that performances under this Agreement shall be rendered in accordance with the laws and rules governing Economic Development Grants Chapter 380, the Texas Local Government Code and the terms and conditions of this Agreement.
- 22.3. Any alterations, additions, or deletions to the terms of this Agreement required by changes in state law or regulations are automatically incorporated into this Agreement without written amendment hereto, and shall become effective on the date designated by such law or regulation.

ARTICLE XXIII. ORAL AND WRITTEN AGREEMENTS

- 23.1 All oral and written agreements between the Parties to this Agreement relating to the subject matter of this Agreement that were made prior to the execution of this Agreement have been reduced to writing and are contained in this Agreement.

ARTICLE XXIV. AUTHORIZED RELIEF FROM PERFORMANCE (*Force Majeure*)

- 24.1 Relief from performance of the Agreement if completion of the Project is delayed by reason of war, civil commotion, acts of God, inclement weather, governmental restrictions, regulations, fire or other casualty, court injunction, necessary condemnation proceedings, interference by third parties, or any circumstances reasonably beyond the Grantee's control, shall be available at the reasonable discretion of City's Director of Planning and Community Director, who may extend the deadlines set forth in this Agreement for such delay. The burden of proof for the need of such relief shall rest upon the Grantee to the satisfaction of the City and the Board. To obtain relief base on *force majeure*, Grantee must file a written request with the Director of the City's Planning and Community Development.

ARTICLE XXV. INCORPORATION OF ATTACHMENTS

- 25.1 Each of Attachments referenced below are incorporated herein for all purposes as an essential part of this Agreement, which governs the rights and duties of the parties.

Exhibit A: Project Site (Special Warranty Deed)

Exhibit B: Board Resolution

Exhibit C: City Ordinance

Exhibit D: Plat, Survey with Field Notes, and Project Site Map

Exhibit E: Waiver of Rights Agreement

Exhibit F: Project Status Update Form

ARTICLE XXVI. ENTIRE AGREEMENT

- 26.1 This Agreement, together with its authorizing ordinance and its attachments constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless same is in writing, dated subsequent to the date hereto and duly executed by the parties.

Signatures on the following page

WITNESS OUR HANDS, EFFECTIVE AS OF _____, 2017.

ACCEPTED AND EXECUTED IN THREE DUPLICATE ORIGINALS, EACH OF WHICH SHALL HAVE THE FULL FORCE AND EFFECT OF AN ORIGINAL, ON BEHALF OF THE CITY OF SAN ANTONIO AND GRANTEE PURSUANT TO ORDINANCE NUMBER 2017- ON THIS THE ____ DAY OF _____ 2017.

CITY OF SAN ANTONIO
a Texas Municipal Corporation

GRANTEE
WE-Roosevelt, a Texas Limited Partnership

BY: Sheryl Sculley
City Manager

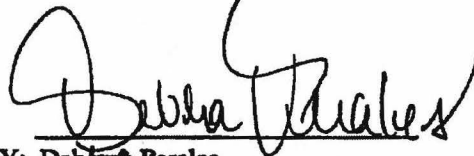
By: ECPGNine, LLC, its General Partner

By: _____
Jack J. Walker, its Manager

DATE

DATE

TAX INCREMENT ZONE #32



BY: Debora Perales
Board Presiding Officer

DATE

ATTEST/SEAL:

BY: Leticia M. Vacek
City Clerk

DATE

APPROVED AS TO FORM:

Andrew Segovia, City Attorney

WITNESS OUR HANDS, EFFECTIVE AS OF August 24, 2017.

ACCEPTED AND EXECUTED IN THREE DUPLICATE ORIGINALS, EACH OF WHICH SHALL HAVE THE FULL FORCE AND EFFECT OF AN ORIGINAL, ON BEHALF OF THE CITY OF SAN ANTONIO AND GRANTEE PURSUANT TO ORDINANCE NUMBER 2017-08-03-0530 ON THIS THE 3 DAY OF August 2017.

CITY OF SAN ANTONIO
a Texas Municipal Corporation

GRANTEE
WE-Roosevelt, a Texas Limited Partnership

[Signature]
BY: Sheryl Sculley
City Manager

By: ECPGNine, LLC, its General Partner

By: _____
Jack J. Walker, its Manager

8-24-17
DATE

DATE

TAX INCREMENT ZONE #32

[Signature]
BY: Deborah Perales
Board Presiding Officer

DATE

ATTEST/SEAL:

[Signature]
BY: Leticia M. Vacek
City Clerk
08/24/17
DATE



APPROVED AS TO FORM:

[Signature]
Andrew Segovia, City Attorney

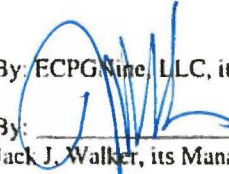
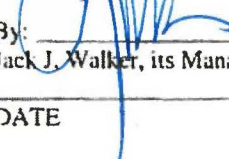
WITNESS OUR HANDS, EFFECTIVE AS OF _____, 2017.

ACCEPTED AND EXECUTED IN THREE DUPLICATE ORIGINALS, EACH OF WHICH SHALL HAVE THE FULL FORCE AND EFFECT OF AN ORIGINAL, ON BEHALF OF THE CITY OF SAN ANTONIO AND GRANTEE PURSUANT TO ORDINANCE NUMBER 2017-
ON THIS THE ____ DAY OF _____ 2017.

CITY OF SAN ANTONIO
a Texas Municipal Corporation

GRANTEE
WE-Roosevelt, a Texas Limited Partnership

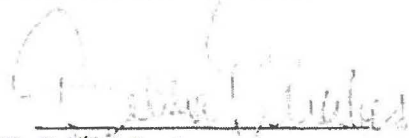
BY: Sheryl Sculley
City Manager

By:  ECPG Nine, LLC, its General Partner
By:  Jack J. Walker, its Manager

DATE

DATE

TAX INCREMENT ZONE #32



BY: Debora Perales
Board Presiding Officer

DATE

ATTEST/SEAL:

BY: Leticia M. Vacek
City Clerk

DATE

APPROVED AS TO FORM:

Andrew Segovia, City Attorney

ARTICLE XXV. INCORPORATION OF ATTACHMENTS

25.1 Each of Attachments referenced below are incorporated herein for all purposes as an essential part of this Agreement, which governs the rights and duties of the parties.

Exhibit A: Project Site (Special Warranty Deed)

Exhibit B: Board Resolution

Exhibit C: City Ordinance

Exhibit D: Plat, Survey with Field Notes, and Project Site Map

Exhibit E: Waiver of Rights Agreement

Exhibit F: Project Status Update Form

Exhibit A: Project Site (Special Warranty Deed)

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

SPECIAL WARRANTY DEED

CHICAGO TITLE GF# A211022596RS

Effective Date: July 18, 2016

Grantor: WE-ROOSEVELT, LP, a Texas limited partnership

Grantor's Mailing Address: c/o ECPGNine, LLC
Attn: Jack Walker, Manager
733 13th St.
Boulder, Colorado 80302

Grantee: KB HOME LONE STAR, INC., a Texas corporation

Grantee's Mailing Address: 4800 Fredericksburg Rd.
San Antonio, Texas 78229

Consideration: Cash and other good and valuable consideration, the receipt of which is acknowledged.

Property (including any improvements):

A 26.36 acre tract of land, out of the Domingo Bustillo Survey No. 31, Abstract 44, situated in the City of San Antonio, Bexar County, Texas, and being out of a called 22.737 acre tract of land, Tract 1, and a 9.326 acre tract of land, Tract 2, as described in a Special Warranty Deed to WE-Roosevelt, L.P., of record in Volume 10672, Page 435 of the Official Public Records of Bexar County, Texas, which is also a portion of previously platted Lots 7 and 8 of the Olsen Terrace, Unit 1 Subdivision, a plat of record in Volume 3850, Page 233 of the Deed and Plat Records of Bexar County, Texas, a portion of previously platted Lots 9 and 10 of the Re-Subdivision Plat of Part Olsen Terr. Unit 1, a plat of record in Volume 4080, Page 246 of the Deed and Plat Records of Bexar County, Texas, and a portion of Lots 21 and 22 of the Vacate & Resubdivision Plat of Olsen Terr. Unit-1, a plat of record in Volume 6900, Page 229 of the Deed and Plat Records of Bexar County, Texas, and being more particularly described by metes and bounds attached hereto as Exhibit "A".

Together with that certain non-exclusive easement as described in Access Easement Agreement dated July 16, 2016, executed by WE-Roosevelt, LP, to KB Home Lone Star Inc., as recorded in Volume 1917, Page 1282, Real Property Records, Bexar County, Texas.

Together with that certain non-exclusive easement as described in Drainage and Grading Easement Agreement dated July 1st, 2016, executed by WE-Roosevelt, LP, to KB Home Lone Star Inc., as recorded in Volume 17911, Page 1391, Real Property Records, Bexar County, Texas.

Together with that certain non-exclusive easement as described in Drainage Easement dated July 1st, 2016, executed by Harlandale Independent School District to WE-Roosevelt, LP, as recorded in Volume 17911 Page 1312, Real Property Records, Bexar County, Texas.

Exceptions to Conveyance and Warranty:

- a. Building setback line, 50 feet wide, along the east lot line, as shown on plat recorded in Volume 4080, Page 246, Deed and Plat Records of Bexar County, Texas.
- b. Building setback line, 50 feet wide, along the east lot line, as shown on plat recorded in Volume 6900, Page 229, Deed and Plat Records of Bexar County, Texas.
- c. Terms, conditions and stipulations of that certain non-exclusive easement as described in Temporary Construction Easement Agreement dated February 26, 2016, executed by Javier Valdez to KB Home Loan Star Inc. as recorded in Volume 17769, Page 1959, Real Property Records, Bexar County, Texas.
- d. 7.5 foot building setback line along the front of subject property, as shown on the plat Volume 2222, Page 177, Deed and Plat Records of Bexar County, Texas.

Grantor covenants and agrees, on behalf of Grantor and Grantor's successors and assigns, that in connection with Grantor's adjoining property which is located along Roosevelt Road ("Grantor's Adjoining Property") which property is more particularly described in Exhibit "B" attached hereto and made a part hereof for all purposes, Grantor shall be obligated to keep and maintain Grantor's Adjoining Property in a neat and clean condition, and clear of any trash, debris, brush, and other materials, which covenant shall bind and run with Grantor's Adjoining Property.

Grantor, for the Consideration and subject to the Exceptions to Conveyance and Warranty, grants, sells, and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold it to Grantee and Grantee's heirs, successors, and assigns forever. Grantor binds Grantor and Grantor's heirs and successors to warrant and forever defend all and singular the Property to Grantee and Grantee's heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under Grantor, but not otherwise, except as to the Exceptions to Conveyance and Warranty.

Taxes for the year 2016 have been prorated between the parties as of the date hereof, and payment thereof shall remain the responsibility of Grantor. Grantee assumes responsibility for payment of taxes and assessments for subsequent years.

EXHIBIT "A"
THE PROPERTY

[Attached hereto]



**FIELD NOTES
FOR A
26.36 ACRE TRACT**

A 26.36 acre tract of land, out of the Domingo Bustillo Survey No. 31, Abstract 44, situated in the City of San Antonio, Bexar County, Texas and being out of a called 22.737 acre tract of land, Tract 1, and a 9.326 acre tract of land, Tract 2, as described in a Special Warranty Deed to WE-Roosevelt, L.P., of record in Volume 10672 Page 435 of the Official Public Records of Bexar County, Texas, which is also a portion of previously platted Lots 7 and 8 of the Olsen Terrace, Unit 1 Subdivision, a plat of record in Volume 3850 Page 233 of the Deed and Plat Records of Bexar County, Texas, a portion of previously platted Lots 9 and 10 of the Re-Subdivision Plat of Part Olsen Terr. Unit 1, a plat of record in Volume 4080 Page 246 of the Deed and Plat Records of Bexar County, Texas and a portion of Lots 21 and 22 of the Vacate & Resubdivision Plat of Olsen Terr. Unit-1, a plat of record in Volume 6900 Page 229 of the Deed and Plat Records of Bexar County, Texas and being more particularly described by metes and bounds as follows:

BEGINNING at a set 1/2" iron rod with a blue plastic cap stamped "KFW Surveying" in the southwest right-of-way line of U.S. Highway 281, also known as Roosevelt Avenue, a 120 foot wide public right-of-way, and the northeast line of the 9.326 acre tract, from which a found 1/2" iron rod at the northeast corner of a 16 foot wide strip of land as described in Volume 813 Page 492 of the Deed Records of Bexar County, Texas, now known as Gutierrez Lane, and for the southeast corner of the 9.326 acre tract bears, S 14°23'00" E, a distance of 100.44 feet;

THENCE: Departing the southwest right-of-way line of U.S. Highway 281 and into and across the 9.326 acre tract, the following six (6) courses

- 1) N 59°23'00" W, a distance of 70.71 feet to a set 1/2" iron rod with a blue plastic cap stamped "KFW Surveying" for an exterior corner of the tract described herein,
- 2) N 14°23'00" W, a distance of 31.00 feet to a set 1/2" iron rod with a blue plastic cap stamped "KFW Surveying" for an interior corner of the tract described herein,
- 3) S 75°37'00" W, a distance of 131.79 feet set 1/2" iron rod with a blue plastic cap stamped "KFW Surveying" for an exterior corner of the tract described herein,
- 4) N 89°48'33" W, a distance of 51.66 feet set 1/2" iron rod with a blue plastic cap stamped "KFW Surveying" for an interior corner of the tract described herein,
- 5) S 75°37'00" W, a distance of 8.21 feet set 1/2" iron rod with a blue plastic cap stamped "KFW Surveying" for an interior corner of the tract described herein, and
- 6) S 14°23'00" E, a distance of 135.51 feet to a set 1/2" iron rod with a blue plastic cap stamped "KFW Surveying" in the north line of Gutierrez Lane, in the south line of the 9.326 acre tract and for a southeast exterior corner of the tract described herein;

THENCE: S 89°24'42" W, along and with the north line of Gutierrez Lane, the north line of the NCB 11156, Blk Lot W. 209.4 Ft of E 1180 Ft of B, 3,3600 acres as conveyed in a Warranty Deed to WE-Roosevelt, LP, of record in Volume 12295 Page 1936 of the Official Public Records of Bexar County, Texas and described in Volume 7097 Page 517 of the Official Public Records of Bexar County, Texas and the south line of the 9.326 acre tract, a distance of 1132.01 feet to a found 1" iron pipe in the east line of the 102.363 acre tract land as described in a Special Warranty Deed to Harlandale Independent School District of record in Volume 5215 Page 314 of the Official Public Records of Bexar County, Texas, for the northwest corner of the Blk Lot W. 209.4 Ft of E 1180 Ft of B, 3,3600 acres, for the southwest corner of the 9.326 acre tract and the tract described herein, from which a found 1/2" iron rod with a plastic cap stamped "Flores" bears, N 21°26'05" E, a distance of 1.45 feet;

THENCE: N 00°09'08" W, into and across 9.326 acre tract, at a distance of 302.29 feet passing the north line of the 9.326 acre tract and the south line of the 22.737 acre tract, from which a found 1/2" iron rod for the northwest corner of the 9.326 acre tract and the southwest corner of the 22.737 acre tract bears, S 89°23'05" W, a distance of 2.18 feet and continuing into and across the 22.737 acre tract, for a total distance of 1127.66 feet to a set 1/2" iron rod with a blue plastic cap stamped "KFW Surveying" in the south line of Lifshutz Subdivision Unit One, a plat recorded in Volume 2222 Page 177 of the Deed and Plat Records of Bexar County, Texas, in the north line of the 22.737 acre tract and for the northwest corner of the tract described herein, from which a found 1/2" iron rod with a plastic cap stamped "Flores" bears, S 83°45'11" W, a distance of 5.85 feet and also from which a found 1/2" iron pipe tract bears, N 00°09'08" W, a distance of 0.21 feet;

THENCE: Along and with the south line of Lifshutz Subdivision Unit One and the north line of the 22.737 acre tract, the following two (2) courses:

- 1) **N 89°30'26" E, a distance of 133.05 feet to a found 1/2" iron rod with a plastic cap stamped "Sinclair" for an angle in the south line of Lifshutz Subdivision and in the north line of the tract described herein, and**
- 2) **N 89°15'26" E, at a distance of 287.43 feet passing a found 1/2" iron rod with a plastic cap stamped "Flores" for the southeast corner of Lot 198 and the southwest corner of Lot 199, both of the Lifshutz Subdivision, and at a distance of 511.93 feet passing a found 1/2" iron rod with a plastic cap stamped "Survey Assoc" for the southeast corner of Lot 201 and the southwest corner of Lot 202, both of the Lifshutz Subdivision, and continuing for a total distance of 577.00 feet to a found 1/2" iron rod for the southwest corner of Lot 1, N.C.B. 11033 of the Conroy Subdivision, a plat recorded in Volume 4400 Page 88 of the Deed Plat records of Bexar County, Texas, for the southeast corner of the Lifshutz Subdivision and an angle of the tract described herein;**

THENCE: S 89°58'01" E, along and with the south line of the Conroy Subdivision and a north line of 22.737 acre tract, a distance of 136.55 feet to a set 1/2" iron rod with a blue plastic cap stamped "KFW Surveying" for the northeast corner of the tract described herein, from which a found Texas Department of Transportation Type I right-of-way monument (damaged) in the southwest right-of-way line of U.S. Highway 281, for the northeast corner of the 22.737 acre tract and the southeast corner of Lot 2 of the Conroy Subdivision bears, S 89°58'01" E, a distance of 247.80 feet;

THENCE: Into and across the 9.326 acre tract and 22.737 acres tract, the following six (6) courses

- 1) **S 14°23'00" E, a distance of 937.46 feet to a set 1/2" iron rod with a blue plastic cap stamped "KFW Surveying" for an interior corner of the tract described herein,**

- 2) N 75°37'00" E, a distance of 8.21 feet to a set 1/4" iron rod with a blue plastic cap stamped "KFW Surveying" for an interior corner of the tract described herein,
- 3) N 61°02'32" E, a distance of 51.66 feet to a set 1/4" iron rod with a blue plastic cap stamped "KFW Surveying" for an exterior corner of the tract described herein,
- 4) N 75°37'00" E, a distance of 131.79 feet to a set 1/4" iron rod with a blue plastic cap stamped "KFW Surveying" for an interior corner of the tract described herein,
- 5) N 14°23'00" W, a distance of 31.00 feet to a set 1/4" iron rod with a blue plastic cap stamped "KFW Surveying" for an exterior corner of the tract described herein, and
- 6) N 30°37'00" E, a distance of 70.71 feet to a set 1/4" iron rod with a blue plastic cap stamped "KFW Surveying" in the southwest right-of-way line of US Highway 281, in the northeast line of the 9.326 acre tract and for a northeast exterior corner of the tract described herein, from which a found Texas Department of Transportation Type I right-of-way monument (damaged) in the southwest right-of-way line of U.S. Highway 281, for the northeast corner of the 22.737 acre tract and the southeast corner of Lot 2 of the Conroy Subdivision bears, N 14°23'00" W, a distance of 781.76 feet;

THENCE: S 14°23'00" E, along and with the southwest right-of-way line of US Highway 281 and the northeast line of the 9.326 acre tract, a distance of 276.00 feet to the **POINT OF BEGINNING** and containing 26.36 acres of land, more or less, situated in the City of San Antonio, Bexar County, Texas. Said tract being described in accordance with an exhibit prepared by KFW Surveying. Bearings are based on NAD83 (2011) Texas State Plane South Central Zone, 4204. Distances recited herein are surface distances using an average combined factor of 0.999830029.

Job No.: 15-106
 Prepared by: KFW Surveying
 Date: June 20, 2016
 File: S:\Draw 2015\15-106 Roosevelt Ave - Blaine \DOCS\FN 26.36 Ac Revised 062016



EXHIBIT "B"

GRANTOR'S ADJOINING PROPERTY

A 4.87 acre tract of land and a 0.7830^{and 8} of an acre tract of land being all of Lot 7 of the Olsen Terrace, Unit 1 Subdivision, a plat of record in Volume 3850 Page 233 of the Deed and Plat Records of Bexar County, Texas, and all of Lots 9 and 10 of the Re-Subdivision Plat of Part Olsen Terr. Unit 1, a plat of record in Volume 4080 Page 246 of the Deed and Plat Records of Bexar County, Texas, and all of Lots 21 and 22 of the Vacate & Resubdivision Plat of Olsen Terr. Unit-1, a plat of record in Volume 6900 Page 229 of the Deed and Plat Records of Bexar County, Texas, SAVE AND EXCEPT the 26.36 acre tract of land described in Exhibit A attached hereto. Ⓚ

Doc# 20160139099
Pages 9
07/20/2016 10:52AM
e-Filed & e-Recorded in the
Official Public Records of
BEXAR COUNTY
GERARD C. RICKHOFF
COUNTY CLERK
Fees \$54.00

STATE OF TEXAS
COUNTY OF BEXAR
This is to Certify that this document
was e-FILED and e-RECORDED in the Official
Public Records of Bexar County, Texas
on this date and time stamped thereon.
07/20/2016 10:52AM
COUNTY CLERK, BEXAR COUNTY TEXAS



Gerard C. Rickhoff

Exhibit B: Board Resolution

T32 2017-06-27-01R

RESOLUTION BY THE BOARD OF DIRECTORS ("BOARD") OF TAX INCREMENT REINVESTMENT ZONE NUMBER THIRTY-TWO, CITY OF SAN ANTONIO, KNOWN AS THE MISSION DRIVE-IN TAX INCREMENT REINVESTMENT ZONE ("TIRZ") AUTHORIZING THE EXECUTION OF A CHAPTER 380 ECONOMIC DEVELOPMENT GRANT AGREEMENT IN AN AMOUNT NOT TO EXCEED ONE MILLION, THREE HUNDRED THOUSAND DOLLARS, AND NO CENTS (\$1,300,000.00) FOR THE DEVELOPMENT OF THE LOMA MESA PROJECT.

* * * * *

WHEREAS, on August 26, 2016, WE-Roosevelt L.P. ("Developer"), submitted a proposal to the City for TIRZ funding to support the development of the Loma Mesa Project, a subdivision comprising 139 single family housing units located in City Council District 3 and within the TIRZ boundaries; and,

WHEREAS, on October 11, 2016, the Board authorized City staff to negotiate an agreement with Developer to provide funding in an amount not to exceed One Million, Three Hundred Thousand Dollars, and No Cents (\$1,300,000.00) in tax increment for the development of the Loma Mesa Project; and,

WHEREAS, on June 27, 2017, the Board considered the proposed Chapter 380 Economic Development Grant Agreement as described in substantial form in attached Exhibit A; NOW THEREFORE;

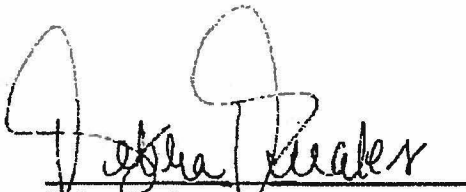
BE IT RESOLVED BY THE BOARD:

SECTION 1: The recitals set out above are adopted in their entirety.

SECTION 2: The Board hereby authorizes approval of the Loma Mesa Development Chapter 380 Grant Agreement, as described in substantial form in attached Exhibit A.


SECTION 3. The Board acknowledges that subsequent approval by City Council is required.

PASSED AND APPROVED this 27th day of June, 2017.



Debra Perales
Presiding Officer

APPROVED AS TO FORM:



Alma Rosa Lozano
Assistant City Attorney

Exhibit C: City Ordinance

**Exhibit D: A-Plat, B-Survey with C-Field Notes, and D-Project
Site Map**

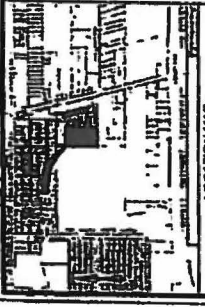
PLAT NUMBER 160152

STATE OF IOWA
DEPARTMENT OF REVENUE
LAND SALES UNIT - 2
 NOTICE: THIS PLAT IS SUBJECT TO THE IOWA LAND SALES ACT AND THE IOWA LAND SALES REGULATIONS. THE STATE OF IOWA IS THE OWNER OF THE LAND DESCRIBED HEREIN. THE LAND IS BEING OFFERED FOR SALE BY PUBLIC AUCTION. THE STATE OF IOWA IS NOT RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION CONTAINED HEREIN.



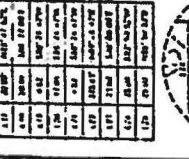
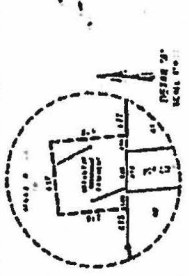
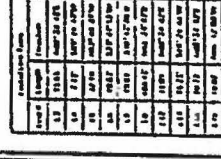
LEGAL DESCRIPTION
 The land described in this plat is situated in the County of _____, State of Iowa, and is more particularly described as follows: _____

NOTICE TO BIDDERS
 The State of Iowa will sell by public auction the land described in this plat on _____ at _____ o'clock of the day of _____ 20____. The land is being offered for sale in several tracts. The minimum bid for each tract is \$_____. The highest bidder will be the purchaser of the land. The State of Iowa is not responsible for the accuracy of the information contained in this plat. The State of Iowa is not responsible for the accuracy of the information contained in this plat.



LEGEND
 1. _____
 2. _____
 3. _____
 4. _____
 5. _____

Tract No.	Area (Acres)	Owner	Remarks
1	1.25	State of Iowa	Unimproved
2	1.25	State of Iowa	Unimproved
3	1.25	State of Iowa	Unimproved
4	1.25	State of Iowa	Unimproved
5	1.25	State of Iowa	Unimproved
6	1.25	State of Iowa	Unimproved
7	1.25	State of Iowa	Unimproved
8	1.25	State of Iowa	Unimproved
9	1.25	State of Iowa	Unimproved
10	1.25	State of Iowa	Unimproved
11	1.25	State of Iowa	Unimproved
12	1.25	State of Iowa	Unimproved
13	1.25	State of Iowa	Unimproved
14	1.25	State of Iowa	Unimproved
15	1.25	State of Iowa	Unimproved
16	1.25	State of Iowa	Unimproved
17	1.25	State of Iowa	Unimproved
18	1.25	State of Iowa	Unimproved
19	1.25	State of Iowa	Unimproved
20	1.25	State of Iowa	Unimproved
21	1.25	State of Iowa	Unimproved
22	1.25	State of Iowa	Unimproved
23	1.25	State of Iowa	Unimproved
24	1.25	State of Iowa	Unimproved
25	1.25	State of Iowa	Unimproved
26	1.25	State of Iowa	Unimproved
27	1.25	State of Iowa	Unimproved
28	1.25	State of Iowa	Unimproved
29	1.25	State of Iowa	Unimproved
30	1.25	State of Iowa	Unimproved
31	1.25	State of Iowa	Unimproved
32	1.25	State of Iowa	Unimproved
33	1.25	State of Iowa	Unimproved
34	1.25	State of Iowa	Unimproved
35	1.25	State of Iowa	Unimproved
36	1.25	State of Iowa	Unimproved
37	1.25	State of Iowa	Unimproved
38	1.25	State of Iowa	Unimproved
39	1.25	State of Iowa	Unimproved
40	1.25	State of Iowa	Unimproved
41	1.25	State of Iowa	Unimproved
42	1.25	State of Iowa	Unimproved
43	1.25	State of Iowa	Unimproved
44	1.25	State of Iowa	Unimproved
45	1.25	State of Iowa	Unimproved
46	1.25	State of Iowa	Unimproved
47	1.25	State of Iowa	Unimproved
48	1.25	State of Iowa	Unimproved
49	1.25	State of Iowa	Unimproved
50	1.25	State of Iowa	Unimproved
51	1.25	State of Iowa	Unimproved
52	1.25	State of Iowa	Unimproved
53	1.25	State of Iowa	Unimproved
54	1.25	State of Iowa	Unimproved
55	1.25	State of Iowa	Unimproved
56	1.25	State of Iowa	Unimproved
57	1.25	State of Iowa	Unimproved
58	1.25	State of Iowa	Unimproved
59	1.25	State of Iowa	Unimproved
60	1.25	State of Iowa	Unimproved
61	1.25	State of Iowa	Unimproved
62	1.25	State of Iowa	Unimproved
63	1.25	State of Iowa	Unimproved
64	1.25	State of Iowa	Unimproved
65	1.25	State of Iowa	Unimproved
66	1.25	State of Iowa	Unimproved
67	1.25	State of Iowa	Unimproved
68	1.25	State of Iowa	Unimproved
69	1.25	State of Iowa	Unimproved
70	1.25	State of Iowa	Unimproved
71	1.25	State of Iowa	Unimproved
72	1.25	State of Iowa	Unimproved
73	1.25	State of Iowa	Unimproved
74	1.25	State of Iowa	Unimproved
75	1.25	State of Iowa	Unimproved
76	1.25	State of Iowa	Unimproved
77	1.25	State of Iowa	Unimproved
78	1.25	State of Iowa	Unimproved
79	1.25	State of Iowa	Unimproved
80	1.25	State of Iowa	Unimproved
81	1.25	State of Iowa	Unimproved
82	1.25	State of Iowa	Unimproved
83	1.25	State of Iowa	Unimproved
84	1.25	State of Iowa	Unimproved
85	1.25	State of Iowa	Unimproved
86	1.25	State of Iowa	Unimproved
87	1.25	State of Iowa	Unimproved
88	1.25	State of Iowa	Unimproved
89	1.25	State of Iowa	Unimproved
90	1.25	State of Iowa	Unimproved
91	1.25	State of Iowa	Unimproved
92	1.25	State of Iowa	Unimproved
93	1.25	State of Iowa	Unimproved
94	1.25	State of Iowa	Unimproved
95	1.25	State of Iowa	Unimproved
96	1.25	State of Iowa	Unimproved
97	1.25	State of Iowa	Unimproved
98	1.25	State of Iowa	Unimproved
99	1.25	State of Iowa	Unimproved
100	1.25	State of Iowa	Unimproved



NOTICE TO BIDDERS
 The State of Iowa will sell by public auction the land described in this plat on _____ at _____ o'clock of the day of _____ 20____. The land is being offered for sale in several tracts. The minimum bid for each tract is \$_____. The highest bidder will be the purchaser of the land. The State of Iowa is not responsible for the accuracy of the information contained in this plat. The State of Iowa is not responsible for the accuracy of the information contained in this plat.

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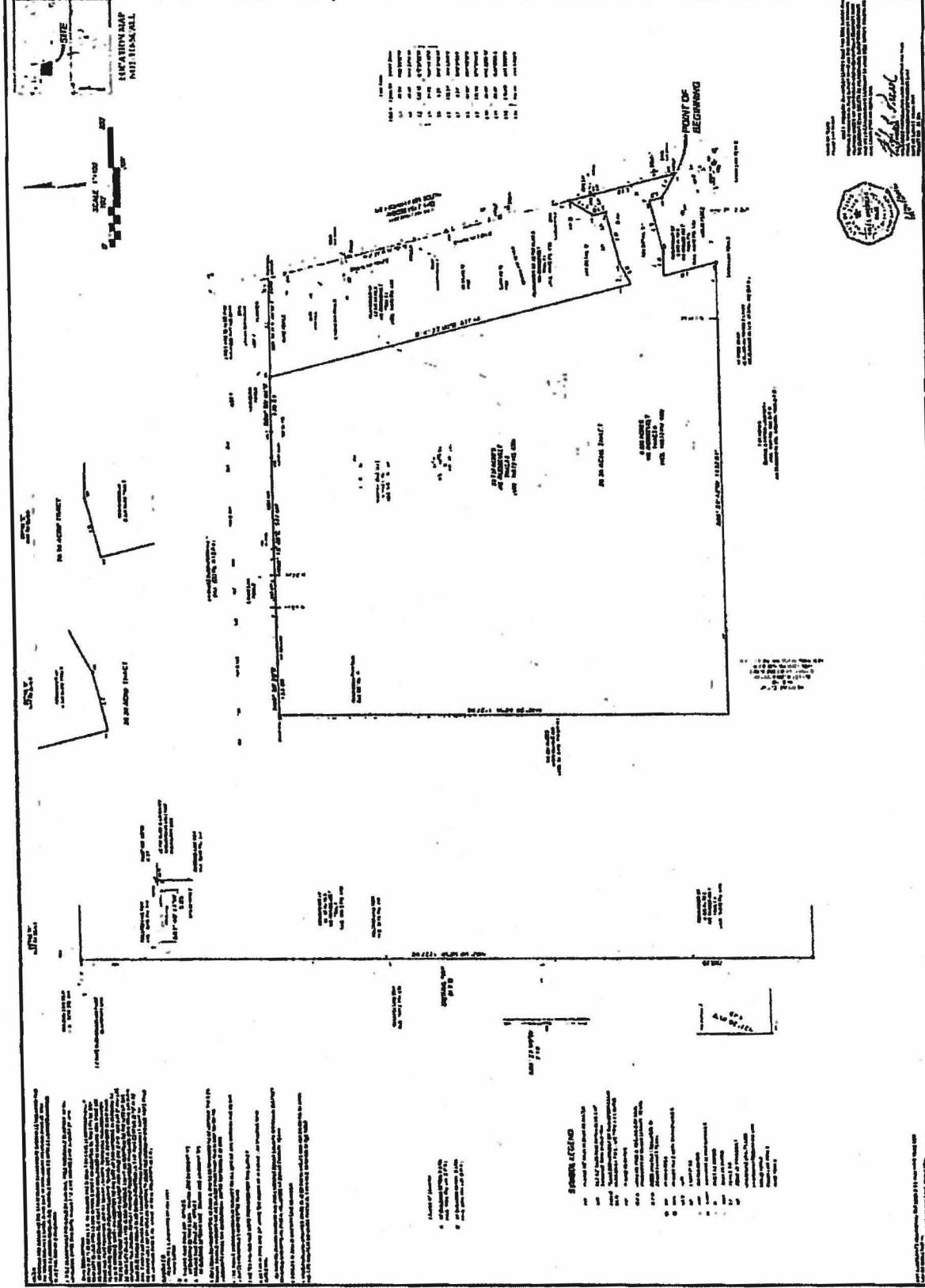
Any provision herein which restricts the sale, or use of the described real property because of race is hereby declared unenforceable under Federal law STATE OF TEXAS, COUNTY OF BEXAR
I hereby certify that this instrument was FILED in Public Records on this date and at the time stamped herein by me and was duly RECORDED in the Official Public Record of Real Property of Bexar County, Texas on:

OCT 28 2016



Gerard C. Rickhoff
COUNTY CLERK BEXAR COUNTY, TEXAS

Doc# 20160213582 Fees: \$82.00
10/28/2016 3:13PM 3 Pages 3
Filed & Recorded in the Official
Public Records of BEXAR COUNTY
GERARD C. RICKHOFF COUNTY CLERK



LEGEND

1. All bearings and distances are given in feet and inches.

2. All bearings are given in degrees, minutes and seconds.

3. All distances are given in feet and inches.

4. All bearings are given in the following order: North, South, East, West.

5. All bearings are given in the following order: North, South, East, West.

6. All bearings are given in the following order: North, South, East, West.

7. All bearings are given in the following order: North, South, East, West.

8. All bearings are given in the following order: North, South, East, West.

9. All bearings are given in the following order: North, South, East, West.

10. All bearings are given in the following order: North, South, East, West.

ADDITIONAL NOTES

1. The survey was conducted on the 15th day of June, 1964.

2. The survey was conducted by the Surveying and Mapping Division of the District of Columbia Department of General Services.

3. The survey was conducted in accordance with the provisions of the District of Columbia Code, Title 22, Chapter 10.

4. The survey was conducted in accordance with the provisions of the District of Columbia Code, Title 22, Chapter 10.

5. The survey was conducted in accordance with the provisions of the District of Columbia Code, Title 22, Chapter 10.

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5. The survey was conducted in accordance with the provisions of the District of Columbia Code, Title 22, Chapter 10.

Handwritten signature





**FIELD NOTES
FOR A
26.36 ACRE TRACT**

A 26.36 acre tract of land, out of the Domingo Bustillo Survey No. 31, Abstract 44, situated in the City of San Antonio, Bexar County, Texas and being out of a called 22.737 acre tract of land, Tract 1, and a 9.326 acre tract of land, Tract 2, as described in a Special Warranty Deed to WE-Roosevelt, L.P., of record in Volume 10672 Page 435 of the Official Public Records of Bexar County, Texas, which is also a portion of previously platted Lots 7 and 8 of the Olsen Terrace, Unit 1 Subdivision, a plat of record in Volume 3850 Page 233 of the Deed and Plat Records of Bexar County, Texas, a portion of previously platted Lots 9 and 10 of the Re-Subdivision Plat of Part Olsen Terr. Unit 1, a plat of record in Volume 4080 Page 246 of the Deed and Plat Records of Bexar County, Texas and a portion of Lots 21 and 22 of the Vacate & Resubdivision Plat of Olsen Terr. Unit-1, a plat of record in Volume 6900 Page 229 of the Deed and Plat Records of Bexar County, Texas and being more particularly described by metes and bounds as follows:

BEGINNING at a set ½" iron rod with a blue plastic cap stamped "KFW Surveying" in the southwest right-of-way line of U.S. Highway 281, also known as Roosevelt Avenue, a 120 foot wide public right-of-way, and the northeast line of the 9.326 acre tract, from which a found ½" iron rod at the northeast corner of a 16 foot wide strip of land as described in Volume 813 Page 492 of the Deed Records of Bexar County, Texas, now known as Gutierrez Lane, and for the southeast corner of the 9.326 acre tract bears, S 14°23'00" E, a distance of 100.44 feet;

THENCE: Departing the southwest right-of-way line of U.S. Highway 281 and into and across the 9.326 acre tract, the following six (6) courses

- 1) N 59°23'00" W, a distance of 70.71 feet to a set ½" iron rod with a blue plastic cap stamped "KFW Surveying" for an exterior corner of the tract described herein,
- 2) N 14°23'00" W, a distance of 31.00 feet to a set ½" iron rod with a blue plastic cap stamped "KFW Surveying" for an interior corner of the tract described herein,
- 3) S 75°37'00" W, a distance of 131.79 feet set ½" iron rod with a blue plastic cap stamped "KFW Surveying" for an exterior corner of the tract described herein,
- 4) N 89°48'33" W, a distance of 51.66 feet set ½" iron rod with a blue plastic cap stamped "KFW Surveying" for an interior corner of the tract described herein,
- 5) S 75°37'00" W, a distance of 8.21 feet set ½" iron rod with a blue plastic cap stamped "KFW Surveying" for an interior corner of the tract described herein, and
- 6) S 14°23'00" E, a distance of 135.51 feet to a set ½" iron rod with a blue plastic cap stamped "KFW Surveying" in the north line of Gutierrez Lane, in the south line of the 9.326 acre tract and for a southeast exterior corner of the tract described herein;

THENCE: S 89°24'42" W, along and with the north line of Gutierrez Lane, the north line of the NCB 11156, Blk Lot W. 209.4 Ft of E 1180 Ft of B, 3,3600 acres as conveyed in a Warranty Deed to WE-Roosevelt, LP, of record in Volume 12295 Page 1936 of the Official Public Records of Bexar County, Texas and described in Volume 7097 Page 517 of the Official Public Records of Bexar County, Texas and the south line of the 9.326 acre tract, a distance of 1132.01 feet to a found 1" iron pipe in the east line of the 102.363 acre tract land as described in a Special Warranty Deed to Harlandale Independent School District of record in Volume 5215 Page 314 of the Official Public Records of Bexar County, Texas, for the northwest corner of the Blk Lot W. 209.4 Ft of E 1180 Ft of B, 3,3600 acres, for the southwest corner of the 9.326 acre tract and the tract described herein, from which a found ½" iron rod with a plastic cap stamped "Flores" bears, N 21°26'05" E, a distance of 1.45 feet;

THENCE: N 00°09'08" W, into and across 9.326 acre tract, at a distance of 302.29 feet passing the north line of the 9.326 acre tract and the south line of the 22.737 acre tract, from which a found ½" iron rod for the northwest corner of the 9.326 acre tract and the southwest corner of the 22.737 acre tract bears, S 89°23'05" W, a distance of 2.18 feet and continuing into and across the 22.737 acre tract, for a total distance of 1127.66 feet to a set ½" iron rod with a blue plastic cap stamped "KFW Surveying" in the south line of Lifshutz Subdivision Unit One, a plat recorded in Volume 2222 Page 177 of the Deed and Plat Records of Bexar County, Texas, in the north line of the 22.737 acre tract and for the northwest corner of the tract described herein, from which a found ½" iron rod with a plastic cap stamped "Flores" bears, S 83°45'11" W, a distance of 5.85 feet and also from which a found ½" iron pipe tract bears, N 00°09'08" W, a distance of 0.21 feet;

THENCE: Along and with the south line of Lifshutz Subdivision Unit One and the north line of the 22.737 acre tract, the following two (2) courses:

- 1) **N 89°30'26" E**, a distance of 133.05 feet to a found ½" iron rod with a plastic cap stamped "Sinclair" for an angle in the south line of Lifshutz Subdivision and in the north line of the tract described herein, and
- 2) **N 89°15'26" E**, at a distance of 287.43 feet passing a found ½" iron rod with a plastic cap stamped "Flores" for the southeast corner of Lot 198 and the southwest corner of Lot 199, both of the Lifshutz Subdivision, and at a distance of 511.93 feet passing a found ½" iron rod with a plastic cap stamped "Survey Assoc" for the southeast corner of Lot 201 and the southwest corner of Lot 202, both of the Lifshutz Subdivision, and continuing for a total distance of 577.00 feet to a found ½" iron rod for the southwest corner of Lot 1, N.C.B. 11033 of the Conroy Subdivision, a plat recorded in Volume 4400 Page 88 of the Deed Plat records of Bexar County, Texas, for the southeast corner of the Lifshutz Subdivision and an angle of the tract described herein;

THENCE: S 89°58'01" E, along and with the south line of the Conroy Subdivision and a north line of 22.737 acre tract, a distance of 136.55 feet to a set ½" iron rod with a blue plastic cap stamped "KFW Surveying" for the northeast corner of the tract described herein, from which a found Texas Department of Transportation Type I right-of-way monument (damaged) in the southwest right-of-way line of U.S. Highway 281, for the northeast corner of the 22.737 acre tract and the southeast corner of Lot 2 of the Conroy Subdivision bears, S 89°58'01" E, a distance of 247.80 feet;

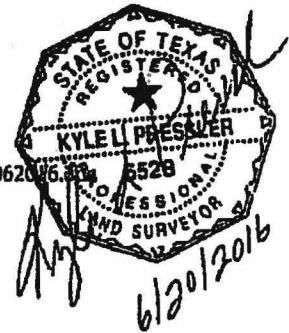
THENCE: Into and across the 9.326 acre tract and 22.737 acres tract, the following six (6) courses

- 1) **S 14°23'00" E**, a distance of 937.46 feet to a set ½" iron rod with a blue plastic cap stamped "KFW Surveying" for an interior corner of the tract described herein,

- 2) N 75°37'00" E, a distance of 8.21 feet to a set ½" iron rod with a blue plastic cap stamped "KFW Surveying" for an interior corner of the tract described herein,
- 3) N 61°02'32" E, a distance of 51.66 feet to a set ½" iron rod with a blue plastic cap stamped "KFW Surveying" for an exterior corner of the tract described herein,
- 4) N 75°37'00" E, a distance of 131.79 feet to a set ½" iron rod with a blue plastic cap stamped "KFW Surveying" for an interior corner of the tract described herein,
- 5) N 14°23'00" W, a distance of 31.00 feet to a set ½" iron rod with a blue plastic cap stamped "KFW Surveying" for an exterior corner of the tract described herein, and
- 6) N 30°37'00" E, a distance of 70.71 feet to a set ½" iron rod with a blue plastic cap stamped "KFW Surveying" in the southwest right-of-way line of US Highway 281, in the northeast line of the 9.326 acre tract and for a northeast exterior corner of the tract described herein, from which a found Texas Department of Transportation Type I right-of-way monument (damaged) in the southwest right-of-way line of U.S. Highway 281, for the northeast corner of the 22.737 acre tract and the southeast corner of Lot 2 of the Conroy Subdivision bears, N 14°23'00" W, a distance of 781.76 feet;

THENCE: S 14°23'00" E, along and with the southwest right-of-way line of US Highway 281 and the northeast line of the 9.326 acre tract, a distance of 276.00 feet to the **POINT OF BEGINNING** and containing 26.36 acres of land, more or less, situated in the City of San Antonio, Bexar County, Texas. Said tract being described in accordance with an exhibit prepared by KFW Surveying. Bearings are based on NAD83 (2011) Texas State Plane South Central Zone, 4204. Distances recited herein are surface distances using an average combined factor of 0.999830029.

Job No.: 15-106
 Prepared by: KFW Surveying
 Date: June 20, 2016
 File: S:\Draw 2015\15-106 Roosevelt Ave - Blaine \DOCS\FN 26 36 Ac Revised 062016





Flex Viewer
Powered by ArcGIS Server

Printed May 17, 2017

The City of San Antonio does not guarantee the accuracy, adequacy, completeness or usefulness of any information. The City does not warrant the completeness, timeliness or positional thematic and attribute accuracy of the GIS data. The GIS data, cartographic products, and associated applications are not legal representations of the depicted data. Information shown on these maps is derived from public records that are constantly undergoing revision. Under no circumstances should GIS-derived products be used for final design purposes. The City provides this information on an "as is" basis without warranty of any kind, express or implied, including but not limited to warranties of merchantability or fitness for a particular purpose, and assumes no responsibility for anyone's use of the information.

Exhibit E: Waiver of Rights Agreement

**EXPRESS WAIVER AGREEMENT
BETWEEN KB HOME LONESTAR INC. AND WE-ROOSEVELT**

This is an Express Waiver Agreement made and entered into by and between KB Home Lone Star Inc., a Texas corporation, ("KB") and WE-Roosevelt, LP, a Texas limited partnership ("WE") for sole rights to incentives under any agreement with the City of San Antonio ("City") and the Board of Directors ("Board") of Tax Increment Reinvestment Zone No. 32, San Antonio, Texas known as the Mission Drive-In TIRZ.

RECITALS

- A. On July 18, 2016, WE sold to KB approximately 26.36 acres of real property, generally located on or about 5019 Roosevelt Avenue, San Antonio, TX 78214, 26.36 acres situated west of the intersection of Roosevelt Avenue and Rilling Road and within the TIRZ boundaries, as described in the "Special Warranty Deed" recorded in Book 17978, Page 710, of the Official Public Records of Bexar County, Texas (the "Property").
- B. On August 26, 2016, WE applied for tax increment funding to facilitate the development of 139 single family homes, known as the Loma Mesa Project.
- C. On October 11, 2016, the Board through Board Resolution T32 2016-10-11-01R, authorized City staff to negotiate an agreement with WE for the development of the Loma Mesa Project, and funding not to exceed \$1,300,000.00 in tax increment from the Mission Drive-In TIRZ.
- D. On November 4, 2016, KB received an Inner City Reinvestment and Infill Policy ("ICRIP") Fee Waiver incentive from the City for the Property.
- E. KB desires to grant WE sole rights and an express waiver to any incentives under any agreement with the City and the Mission Drive-In TIRZ Board with the exception of the City's ICRIP Fee Waiver Incentive.

AGREEMENT

For and in consideration of the premises and mutual promises between KB and WE, who collectively may be referred to as the "Parties", hereinafter set forth, together with other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

- 1. **Discretionary Program.** The City's Tax Increment Finance ("TIF") Program is a discretionary incentive program. The City and/or the Board do not have any obligation to extend any TIF funding. The Parties understand and agree that neither KB nor WE have any rights to incentives under the City's TIF Program.
- 2. **WE Bears the Risk.** Any recipient of TIF Funds bears the risk of funding availability, priority of payment in accordance with Finance Plan, and shall not rely on any award of TIF Funds. The Parties understand and agree that any expenditure made in anticipation of reimbursement of TIF Funds shall not be construed to be the financial obligations of the City, the Board and/or the TIRZ. Recipient(s) of any TIF funding award shall bear all risks associated with reimbursement, including, but not limited to: incorrect estimates of tax increment, changes in tax rates or tax collections, changes in law or interpretations thereof, changes in market or economic conditions, changes in interest rates or capital markets, changes in

building and development code requirements, changes in City policy, and unanticipated effects covered under legal doctrine of force majeure.

3. **No General Funds.** Any contribution made by any Party, including a developer, contractor, subcontractor or any other person or entity directly or indirectly associated with a project, in anticipation of reimbursement from the TIF Fund shall never be an obligation of the City's General Fund. The Parties understand and agree that any contribution made to the TIRZ shall not be an obligation of the City's General Fund.
4. **Express Waiver.** With the exception of the City's ICRIP Fee Waiver already provided to KB, and subject to the provisions of this Section 4, KB hereby grants WE sole rights to seek any City incentive, including TIF funding under any agreement with the City and/or the Mission Drive-In TIRZ Board for the development of the Property. KB hereby waives any claim under any agreement by WE with the City and/or the Mission Drive-In TIRZ Board for the development of the Loma Mesa Project. WE acknowledges and agrees the following with respect to the rights and waiver provided herein:
 - a. The waiver of rights provided herein will not be effective unless and until WE obtains approval for TIF funding from the Mission Drive-In TIRZ Board and the City;
 - b. WE shall be the applicant and signatory under any and all agreements with the Mission Drive-In TIRZ Board, City or other applicable governmental authority related to the incentives referenced herein;
 - c. KB makes no representation, warranty, or covenant that WE will be able to obtain such incentives, and WE hereby releases KB from any and all claims related thereto; and
 - d. Under no circumstance shall KB be obligated to (i) enter into any agreement concerning the Mission Drive-In TIRZ, (ii) modify, alter, revise or change KB's development plans for the Property, or (iii) alter or delay KB's timing for the development of the Property; and
 - e. WE shall indemnify and hold KB harmless from and against any and all claims, causes of action, damages, liability, costs or expenses (including, but not limited to, reasonable attorneys' fees, court costs and expert fees) arising out of or related to any agreements entered into by WE in connection with the rights granted by KB herein.
5. **Binding Effect.** This Express Waiver shall be binding upon and inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, and successors.

[Signature page follows]

IN WITNESS THEREOF, the Parties have caused this instrument to be signed on the date of each signature below. This agreement shall be effective on the date of the last signature below.

KB Home Lone Star Inc.
a Texas Corporation

WE-Roosevelt, A Texas Limited Partnership

By: _____

By: EOPGNine, LLC, its General Partner

Name: _____


By:  _____
Jack J. Walker, its Manager

Title: _____

June 21, 2017
DATE

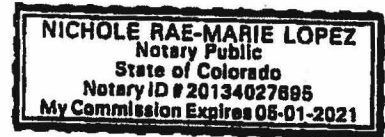
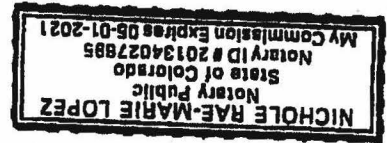
DATE

ATTEST/SEAL:

BY: 

Print Name: Nichole Rae-Marie Lopez
Notary Public

06/21/2017
DATE



IN WITNESS THEREOF, the Parties have caused this instrument to be signed on the date of each signature below. This agreement shall be effective on the date of the last signature below.

KB Home Lone Star Inc.
a Texas Corporation

WE-Roosevelt, A Texas Limited Partnership

By: [Signature]
Name: Jack J. Walker

By: ECPGNine, LLC, its General Partner

Title: VP and Acquisition
6/22/2017
DATE

By: _____
Jack J. Walker, its Manager

DATE

ATTEST/SEAL:

BY: [Signature]

Print Name: Cindy Hansen Ku
Notary Public

6/23/17
DATE



Exhibit F: Project Status Update Form



CITY OF SAN ANTONIO
TAX INCREMENT REINVESTMENT ZONE
Project Status Report

Pursuant to the Development Agreement, the DEVELOPER has agreed to provide periodic reports of construction to the CITY upon reasonable request. The City requests that the Developer submit a TIRZ project status report every quarter every year until the project is complete, due by:

- January 15th, for the first quarter,
- April 15th, for the second quarter,
- July 15th, for the third quarter and
- October 15th, for the fourth quarter

At the completion of the project, the DEVELOPER shall submit a comprehensive final report.

Each quarterly report must include the following information:

- The number of Private Improvements completed (single-family and/or multi-family and commercial when applicable) and year in which they were completed
- The Public Improvements completed and costs incurred to date by year in which improvements were completed
- Indicate whether the construction is on track with the approved Final Project and Finance Plan
- If the project timeline has slipped, the Developer is to submit an updated project timeline
- The sale prices of the single-family homes completed (Please obtain and provide sales data for original sales price of every home sold.)
- Photos of: housing and commercial developments; before, during and after construction

In addition, for the City to monitor compliance with insurance requirements of the Development Agreement, the Developer must submit annually the Certificate of Insurance reflecting proof that:

- the City and its officers, employees and elected representatives are additional insureds as respects the operations and activities of, or on behalf of, the named insured contracting with the City, with the exception of the workers' compensation policy;
- the endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City of San Antonio is an additional insured shown on the policy;
- the Workers' Compensation and employers' liability policy provides a waiver of subrogation in favor of the City of San Antonio; and
- Notification to the City of any cancellation, non-renewal or material change in coverage was given not less than thirty (30) days prior to the change or ten (10) days prior to the cancellation due to non-payment of premiums, accompanied by a replacement Certificate of Insurance.

Attached is a form you may use to fulfill this reporting requirement.

TIRZ Project Progress Report (Construction)

Name of Project:	TIRZ #:
Progress Report #:	TIRZ Term: From: To:
Period Covered by this Report: From: To:	

The number of Private Improvements (single-family and/or multi-family and commercial if applicable) completed and year in which they were done

Phases (Year)	start date	end date	Private Improvements							
			Single-Family Units		Multi-family Units		Commercial Acres and Square Feet		Other Improvements (example: day-care centers)	
			Proposed	Completed	Proposed	Completed	Proposed	Completed	Proposed	Completed
1										
2										
3										
4										
5										
6										
7										
8										
9										
10										

The Public Improvements completed and costs incurred to date by year (phase) in which improvements occurred

Phase (Year)	Public Improvements												
	start date	end date	Sidewalks and Approaches	Streets	Drainage	Water	Sewer	Electrical (Lines Extension)	Gas	Street Lights	Traffic Signal Light	Landscaping	Other
			Linear Feet	L.Ft.	L.Ft.	L.Ft.	L.Ft.	L.Ft.	L.Ft.	Number	Number/Location	L.Ft.	
1													
2													
3													
4													
5													
6													
7													
8													
9													
10													
TOTALS													

➤ Is Construction on track with the approved Final Project and Finance Plan? If not, please submit an updated timeline with the actual construction and the projected buildout.
 K:\TIF UNIT\Procedural Manual\Project Status Report - final 051105.doc

